

# **Minutes of the Public Meeting**

## **United States Election Assistance Commission**

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Held on Tuesday, November 13, 2007

VERBATIM TRANSCRIPT

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Tuesday, November 13, 2007. The meeting convened at 10:03 a.m., EDT. The meeting was adjourned at 1:30 p.m., EDT.

**PUBLIC MEETING**

**CHAIRWOMAN DAVIDSON:**

I'd like to call the meeting to order. And if I could ask everybody to please put their cell phones on vibrate so that they won't ring during the meeting, I'd appreciate it, or turn them off. Either one.

And if you would stand with me, we'll do the Pledge of Allegiance.

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[Whereupon, Chairwoman Davidson led all present in the recitation of the Pledge of Allegiance.]

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**CHAIRWOMAN DAVIDSON:**

Could we have the roll call, please? Gavin is our Acting Counsel General so I would like for him to take the roll, please.

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**COUNSEL GILMOUR:**

Certainly. Would each Commissioner please respond verbally for the record when I call their name? Chair Donetta Davidson?

**CHAIRWOMAN DAVIDSON:**

Present.

**COUNSEL GILMOUR:**

Vice-Chair Rosemary Rodriguez.

**COMMISSIONER RODRIGUEZ:**

Here.

**COUNSEL GILMOUR:**

Commissioner Gracia Hillman.

**COMMISSIONER HILLMAN:**

Here.

**COUNSEL GILMOUR:**

Commissioner Caroline Hunter.

**COMMISSIONER HUNTER:**

Here.

**COUNSEL GILMOUR:**

Madam, all four members of the Commission are present.

**CHAIRWOMAN DAVIDSON:**

All right. And if everybody would look at the agenda and I would like to have a motion to approve the agenda.

**COMMISSIONER RODRIGUEZ:**

So moved.

**CHAIRWOMAN DAVIDSON:**

Second?

**COMMISSIONER HUNTER:**

Second.

**CHAIRWOMAN DAVIDSON:**

All those in favor please say aye. Opposed?

[The motion carried unanimously.]

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**CHAIRWOMAN DAVIDSON:**

Well, today -- first of all I would like to welcome the delegation, and I'm not sure I'm going to say that right, from Jalisco, Mexico. I got halfway close anyway. So we do welcome you here to the United States and we're very pleased that you're able to attend one of our meetings at the Election Assistance Commission. So I know you had a briefing this morning on our Voluntary Voting System Guidelines and of our certification program from Brian Lewis, and we definitely welcome you and we really are thrilled that you are taking an interest in what we are doing at the Election Assistance Commission. Which brings me to note that today -- I'd like to welcome everybody that's in the audience, and as you all are aware we have a pretty full agenda.

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But I would also like to encourage our Voluntary Voting System Guidelines are out for comment. We have been receiving really quite a few already, and so we would like to encourage everybody to make comments to those. They're up on our Web site. Look at it. It's very easy to make comments on each and every section that you would like to, so please take time and review it and make comments to it. This is a great opportunity. That will be up for 120 days.

Moving on with old business, the minutes are before us. Is

there any additions or corrections that anybody has to the meeting minutes? If not, is there a motion to approve?

COMMISSIONER HUNTER:

So moved.

COMMISSIONER RODRIGUEZ:

Second.

CHAIRWOMAN DAVIDSON:

The motion has been made and seconded to approve the minutes. I would like to call for a vote. All those in favor of please say aye.

Opposed?

[The motion carried unanimously.]

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CHAIRWOMAN DAVIDSON:

And now we'll move on with a report from our Executive Director Tom Wilkey.

EXECUTIVE DIRECTOR WILKEY:

Good morning. I'd like to thank first everyone for attending on this rainy morning in Washington. I also want to extend my welcome to you from Jalisco, Mexico. And I know that we will be meeting tomorrow, so I look forward to that.

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Under voting system reports clearinghouse, in August the Commission adopted a policy that established the voting system reports clearinghouse. This clearinghouse is a place that we will post reports on

voting systems conducted by state and local election officials. Last week we launched the clearinghouse after getting our first request from California Secretary of State Debra Bowen, and we've posted a link to the state's top-to-bottom review of its voting systems. You can go to research, resources and reports section of our Web page. We encourage other election officials to share this kind of information with us and we hope that they do. They must just submit a request to me or to our Chair, and we'll take it from there based on our policy.

Under voting system certification, ten voting system manufacturers have registered for EAC's Testing and Certification program. Nine voting systems have been submitted for testing. We have issued a new interpretation about the capability of voting systems to support alternative languages. All of this information is available at [eac.gov](http://eac.gov). And you can click on the Voting Systems Center link.

The TGDC, the Technical Guidelines Development Committee, has recommended and has submitted to us its recommended Voluntary Voting System Guidelines, the next iteration. We have launched our public comment tool. In my opinion, it is one of the most technically advanced, user friendly and accessible one that I have ever seen in the Federal government. I urge all of you to take a look at [eac.gov](http://eac.gov). All comments will be made public. The comment period lasts for 120 days. This is the first of two 120-day comment periods. At the end of the comment period, EAC will

evaluate all comments, then issue its draft for another 120-day public comment period. We strongly urge everyone to give us their feedback.

Under election management guidelines, one of the most popular initiatives at the EAC are our Quick Start Management guides. We just issued six more on the following topics: Absentee voting and vote by mail, acceptance testing, change management, contingency planning, polling place and vote center management, media and public relations. These have all been mailed to election officials throughout the nation and they are posted on our Web site [eac.gov](http://eac.gov). We have gotten many requests for additional copies. You can also call us toll free at 866-747-1471 if you need more. They are incredible. Election officials from around the country have a great deal to say about these. There are a series of about 12 now and have been well received by our election officials and others throughout the country.

Under EAC general updates, we have launched a new Web site, so please email us at [HAVAINFO@EAC.GOV](mailto:HAVAINFO@EAC.GOV) if you have questions or need help finding information on the new site. Please note that if you have linked to us in the past, these links may be broken. Just e-mail us and we'll be glad to help you update your links. EAC distributes a monthly electronic newsletter that provides updates on our activities, upcoming meetings and other HAVA-related issues, the best way to receive frequent updates to our voting system program and other initiatives at the EAC. To sign up, you can call us at our toll-free number or send us an email at [eac.gov](http://eac.gov).

And this is just a reminder to the Commissioners that at our December meeting next month in conjunction with EAC Standards and Advisory Board, we will have a complete rundown of all the year-end activities throughout 2007 and all of the staff will be participating in that. So I look forward to that since I think you will agree that we've had a very busy year, and I look forward to that.

That is my report, Madam Chair.

**CHAIRWOMAN DAVIDSON:**

Thank you. Questions for Mr. Wilkey?

**COMMISSIONER HILLMAN:**

I do.

**CHAIRWOMAN DAVIDSON:**

Okay. And welcome back Commissioner Hillman.

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**COMMISSIONER HILLMAN:**

Thank you. Tom, under the voting system reports clearinghouse...

**EXECUTIVE DIRECTOR WILKEY:**

Uh-huh.

**COMMISSIONER HUNTER:**

...could you just clarify what reports are eligible for posting on the clearinghouse? Because your report said, "will post reports on voting systems conducted by state and local," and I'm not sure what you mean "voting systems conducted."

**EXECUTIVE DIRECTOR WILKEY:**

The policy that you have adopted are for reports that have been generated by state or local election jurisdiction and that have requested that they be put on our Web site. And that request is made through me or the Chair, and under that policy I notify the four Commissioners and they have two days to indicate whether they approve or disapprove of the report being put up on the Web site. But as of right now it is only reports that are authorized or issued by a state or local jurisdiction, and they need to request that from us. And of course as I indicated in my report, I hope that they do because some of them are very worthwhile.

**COMMISSIONER HILLMAN:**

Okay. Maybe a little hypothetical, but if an election administrator, whether at the county or state level, writes a report based on his or her observations and experiences of the voting system, does that qualify as a report to be posted?

**EXECUTIVE DIRECTOR WILKEY:**

I believe so, because the policy that you adopted if it is authorized, accepted, or approved, paid for by a local jurisdiction and they request us to put that report up, then we will put it up with your concurrence.

**COMMISSIONER HILLMAN:**

And so, if there is a dissenting point of view, let's say that there's an election commission that has jurisdiction whether at the county or state level, and if members of the Commission don't agree with the report that's

been submitted and submit a dissenting view are we then considering posting that as well?

EXECUTIVE DIRECTOR WILKEY:

Well, I think that as I understand the policy, and Counsel can correct me if I'm wrong, but if there is a dissent not to post, then it wouldn't be posted.

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COMMISSIONER HILLMAN:

No, I don't mean not to post, I mean a dissenting point of view. If somebody writes a report that suggests a particular system isn't user friendly, lacks in human factors, isn't accessible, whatever, and if other members of the Commission disagree with that and want to write their own report about that, is EAC saying it will consider and post dissenting views from that same jurisdiction? Do we know? Have we gone that far?

EXECUTIVE DIRECTOR WILKEY:

We haven't really gone that far, Commissioner, because I think we -- our intention was that the local or state jurisdiction would approve that, number one, approve sending it to us and that upon our receipt of that, with your approval during that two-day period that it would be posted. I don't think we ever contemplated that it would generate an opposing view by a member of the Commission, but I think that's something we need to look into.

COUNSEL GILMOUR:

I think we -- I don't have a copy of the policy in front of me but it would certainly matter -- I don't recall the specific jurisdiction that could submit, but certainly if a jurisdiction submits something we would assume they have their own processes for making that decision, as we do.

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COMMISSIONER HILLMAN:

Well that's why I started asking my question, if the administrator writes a report and submits it, we would accept it that it is being officially submitted by the administrator...

EXECUTIVE DIRECTOR WILKEY:

Right.

COMMISSIONER HILLMAN:

...if the then governing body or members of that governing body take exception with what the director has written. Let's just say clearly we haven't thought that through and we don't find ourselves in that position, because I don't know if the policy says it has to be approved by the chief -- the Chair of the Commission or the chief election official, you know. I don't know the vehicles through which such reports could come to us...

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EXECUTIVE DIRECTOR WILKEY:

Right.

COMMISSIONER HILLMAN:

...putting us in a position of having to then consider, you know, opposition or opposing point of view from the same jurisdiction. So I'm just...

**COUNSEL GILMOUR:**

We have to look at the document and make sure what it -- how it identifies the who and the what.

**EXECUTIVE DIRECTOR WILKEY:**

Right.

**COMMISSIONER HILLMAN:**

Right.

**COUNSEL GILMOUR:**

And then if it's not clear, we'll have to work on clarifying that.

**EXECUTIVE DIRECTOR WILKEY:**

Right. I mean certainly from previous experience, if I had a report that was generated by my agency and it was not approved, I would not be submitting anything without the approval of my board or commission.

**COMMISSIONER HILLMAN:**

Right.

**EXECUTIVE DIRECTOR WILKEY:**

But...

**COMMISSIONER HILLMAN:**

But as we know, with 7,000 jurisdictions we have no clue...

**EXECUTIVE DIRECTOR WILKEY:**

But you are right, you could have three say "yes" and one who wants to submit an opposing..

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**COMMISSIONER HILLMAN:**

Right. Or some jurisdiction where the administrator can submit it on his or her own and doesn't have to get approval of the County Commission or get approval of the City Council...

**EXECUTIVE DIRECTOR WILKEY:**

Right.

**COMMISSIONER HILLMAN:**

...to be able to submit it. I mean we have many different configurations of election administrative, I guess I just want to caution that the EAC doesn't unwittingly get caught up that we're either going to post what we receive or somehow make a determination...

**EXECUTIVE DIRECTOR WILKEY:**

Uh-huh.

**COMMISSIONER HILLMAN:**

...as to whose perspective it is that we're posting on any particular report of a system. Okay.

**EXECUTIVE DIRECTOR WILKEY:**

Okay, thank you.

**COMMISSIONER HILLMAN:**

On your year-end report will it also include -- and let me make this in a request and not ask a question -- a summary of everything EAC has done from inception to meet statutory requirements under HAVA? Even -- I mean would it have to happen in 2004 or 2005 or 2006, not just what we've done in 2007?

**EXECUTIVE DIRECTOR WILKEY:**

Right. Yes.

**COMMISSIONER HILLMAN:**

Okay.

**EXECUTIVE DIRECTOR WILKEY:**

As a matter of fact, Commissioner, that is how the whole thing started with that in mind and with that request. And then it was the feeling that there are so many other things that we have done in addition to our statutory mandates that it would be good to showcase those, especially since we will have a number of local and state election officials present for our Standards and Advisory Board meeting.

**COMMISSIONER HILLMAN:**

Good. Thank you.

**EXECUTIVE DIRECTOR WILKEY:**

So we wanted to do something full.

**COMMISSIONER HILLMAN:**

Good. Thank you.

**CHAIRWOMAN DAVIDSON:**

Is there any follow-up questions? All right, moving on then I think we've moving in to the new business. And I'd like to have Herb Lin, I should say Dr. Herbert Lin come forward. I'd like to welcome you, obviously. I know that we have worked with you in the past at the very beginning really to set up the voter registration database best practices.

And we appreciate working with the National Research Council. And I think that that document went a long ways with the state and they really respected your ability to work with not only election officials and technicians, but also the IT within the state or county. Those people that you represented in the past I thought was really a plus and brought insight into the process that a lot of times is left out.

So welcome. We look forward to hearing about our moving forward now into our new study and I'll turn it over to you for your briefing.

DR. LIN:

Thanks so much. I appreciate the opportunity to be here today. For the record, I'm Dr. Herbert Lin. I'm the Chief Scientist of the Computer Science and Telecommunications Board at the National Research Council, which is the operating arm of the National Academy of Sciences, National Academy of Engineering, and the Institute of Medicine. We operate under a Congressional charter, as you know, to provide the government with advice on matters of public policy related to science and technology.

I'm here as the study director of the Academy project on state voter registration databases that the EAC is sponsoring. It's a three-year project from which we have the responsible committee being chaired by Sharon Priest and Olene Walker. You may know that Sharon Priest is the former Secretary of State of Arkansas, and Olene Walker a former Governor of Utah, D and R respectively to chair the responsible committee. Under this project we're organizing a series of workshops and through the committee

the Academy will be issuing an interim and final report to address challenges in implementing and maintaining state voter registration databases and providing advice to the states on how to evolve and maintain these databases in order to share information with other states securely and accurately in fulfillment of the Help America Vote Act of 2002.

We have two goals in this project, useful advice and building community. The first goal, useful advice, we hope to provide through a set of reports on statewide voter registration databases, how they might be implemented, what kinds of difficulties might be encountered in their implementation, and what kinds of solutions might help to overcome those difficulties.

Two reports. The first will be an interim report which is deliverable the beginning of April 2008 that will outline challenges to achieving interoperability of state voter registration databases; describing potential solutions to these challenges; and discussing specific timelines over which state and local election officials could implement possible solutions, including solutions that could be implemented prior to the 2008 November election.

A final report, due at the end of the project, which ballpark is 3<sup>rd</sup> quarter calendar year 2009, will build on this interim report by describing technical, procedural, and organizational impediments to full voter registration database interoperability and outline a plan for achieving such interoperability between the states. The final report will address issues

such as the current state of voter registration databases across the states, the functionality that's useful for a state in checking its voter registration database against the database in another state, the primary technical, procedural, and organizational impediments standing in the way of full interoperability and paths to interoperability that minimize technical risk and expense.

The second goal of the project I think is equally as important, and it builds on the remarks that the Chair made at the beginning, is to catalyze discussions and interactions in the elections community with information technology experts to which the elections community doesn't traditionally have much access. As you noted in your remarks, in 2005 the Academies worked with EAC to bring together state election officials, state IT managers, and some of the most senior and experienced information technologists around the country. We held two meetings in 2005 with these participants, and as you noted we got a uniformly positive response from the elections community to these meetings. And that, as I understood it, led directly to the discussion aspect of the current report.

To support this goal of generating and developing community, we intend to hold six workshops in the 2007-2008 timeframe. These workshops will be oriented towards small-group discussions among technology experts and state and local election officials in order to facilitate the exchange of ideas among participants.

To date, we have empanelled the study committee, and there is a roster attached to the printed version of the testimony that you have. The kickoff meeting was August 6, 2007. Our first meeting was here in Washington, D.C. We had a committee meeting and a workshop. That event featured presentations on the status of voter registration database efforts, technical and operational issues associated with record matching, and lessons to be learned from interoperability and database operations in other domains. We are currently completing planning for the second workshop to be held on November 29<sup>th</sup> and 30<sup>th</sup> later this month, also here in Washington, D.C. And there is details about this workshop and registration information and the like available at our Web site [www.cstb.org](http://www.cstb.org).

The proceedings from the two workshops that we've already had are a primary source of input to the committee in its deliberations prior to preparation of the interim report. After the interim report is issued, of course, we'll take the discussions of the remaining workshops and those will add to the committee's knowledge base in preparation for the final report.

It's worth saying here, obviously to the Commission, but as importantly to the broader elections community, that we're really trying to cast a broad net for participation and input into subsequent workshops. It's our intent to capitalize on the expertise that's out in the field to the maximum extent possible, and to that end we encourage members of the election community to make their concerns and interests known to us so

that the workshops can be structured in the most useful and appropriate ways. So this is not something -- we really want it to be not something that we create sort of in a vacuum without input from the rest of the world. We really want the input of the outside world, too. And we look forward to working with the Commission in the months to come.

That concludes the prepared part and I'll be happy to entertain any questions you might have.

**CHAIRWOMAN DAVIDSON:**

Thank you. Questions. Do you want to start out Commissioner Hunter?

**COMMISSIONER HUNTER:**

Dr. Lin, thank you for joining us today and thank you for your work. As you well know, and as we've talked among ourselves, this interest gains more and more -- this topic gains more and more interest among the public as the days go on, and I think part of the reason we've learned with our election-day survey is that sort of the keys to a lot of election administration seem to be within the statewide voter registration databases with respect to what are the possibilities regarding data collection, what are the possibilities regarding less maintenance efforts, regarding increasing voter participation. I mean there's a lot of very important aspects and I think we look forward to your work and hope that it advances the overall goal of making elections more efficient and accurate for everybody. And thank you for your request for input. I know that's always

a challenge to try to figure out who exactly -- it's such a broad topic and I know it will be very challenging to narrow it down in such a way that it provides guidance for the states, but I believe they're looking forward to it.

So thank you.

DR. LIN:

Thanks.

CHAIRWOMAN DAVIDSON:

Commissioner Rodriguez?

COMMISSIONER RODRIGUEZ:

Thank you Dr. Lin for your comments. We attended a meeting recently at Pew, I think, about this issue, and I didn't realize until that day that there were as many as 23 states already at some stage, either states that have already compared lists or are in the process of writing agreements. And there was a -- I guess this isn't a question but it's just sort of a red flag I think, because there was a lot discussion at the group -- among the group about not -- the Federal government not imposing any kind of guidance or requirements or anything like that. But when you're at 23 states you're almost at half the country, and at some point it's going to get somebody's attention with much more authority than the EAC. And so I just think that we all ought to be prepared for the interests at maybe a higher level than we are experiencing today.

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DR. LIN:

Right, hence the call for broad input and contribution to this so that we don't go off into never-never land with some, you know, with something dumb. We really want the community input.

COMMISSIONER RODRIGUEZ:

I appreciate that. Thank you.

CHAIRWOMAN DAVIDSON:

And I guess just to add a touch, before I go to Commissioner Hillman, but to add a touch of what has been said, we have been collecting data in this office now and by requirement of law of HAVA to give to Congress and we are finding that states are not collecting the data that is required. Is this one area that you're really looking into is data collection and making sure that that is mentioned in the study as well as the interoperability and less maintenance and things like that? Is collecting data -- I haven't been as involved with your -- as you know, only two Commissioners can be really involved with the process and working with you without causing a problem with the Open Records Act, and so I've not been one that has been involved. Is that one of the areas that you're looking at?

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DR. LIN:

When you say "collecting data," do you mean collecting -- you could mean two things by that. I'm not sure what you mean. Do you mean the process of collecting data from individual would-be voters in order to

register? Or do you mean collecting data on the databases themselves and their performance and so on?

CHAIRWOMAN DAVIDSON:

The databases themselves, the performance, and really what is required by law to have some of this in the databases so it is collected from states for, we'll say, you know, how many people vote to, how many absentees. And in our HAVA report there is things that's mandated and yet we're getting states that are telling us that they've not collected that. So it's things like that that is mandated to be collected, and if that is in their statewide voter registration system it would be very easy for us to get correct information from states. And I think that that is one of our concerns, making sure that it is correct and making sure that we get information that is required by law. So that is one of the areas I wondered if you were looking into.

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DR. LIN:

Certainly we are looking -- we will be looking at how "good" the databases are." I mean that is -- I don't want to define what "good" means too precisely here because that's part of what the committee's job is to do. Certainly, obviously, one part of "goodness" is the extent to which they conform to legal mandates and so I think that it's fair to say that we will address that. Recommendations for improving that data collection I think, you know, are also at least within scope and we will try -- I think that we will try to mention those sorts of things in the reports that we give you.

**CHAIRWOMAN DAVIDSON:**

And I guess I shouldn't have used the word "good."

**DR. LIN:**

Okay.

**CHAIRWOMAN DAVIDSON:**

I should have used the word "accurate" because it does mean a difference to me. I mean there are databases if the information that they're receiving isn't accurate or that they're giving to us isn't accurate and when we call back and find out that it's different than what their initial report was, that's a big concern to us. It's more work for the states and it definitely is more work for the EAC and the staff. So I think that's definitely an interest.

The other thing I -- you mentioned that you felt like some of this could be implemented before the '08 election, you know. There's suggested changes that you thought could be implemented right away in their databases?

**DR. LIN:**

What we said -- what I said in my testimony is that the interim report, which will be out in April...

**CHAIRWOMAN DAVIDSON:**

Right.

**DR. LIN:**

...is intended to provide some information on potential solutions that could be implemented or actions that could be taken to improve voter registration databases prior to the November election.

CHAIRWOMAN DAVIDSON:

Have you gotten testimony from states that say that it could be completed that fast? With it coming out in April and their primaries are upcoming, we're always told it takes six months to a year to change the software in their voter registration system. So I wondered if you received testimony that indicates that changes could be made.

DR. LIN:

The issue there is not so much that -- what you're saying there is correct, that it often takes a long time to proof out software, to make sure that it's working and to debug it and so on. I mean I think what you're saying there is correct. I would point out that the -- it's a hard problem to come up with something in April that could be implemented. That doesn't mean -- and what we haven't -- the Commissioners asked us specifically, you know, "Can you come up with something here that will help?" We take that mandate seriously, that we will try. If we honestly say, "No, there's absolutely nothing" -- if we honestly find that there's nothing that we can do, that any state can possibly do to improve its voter registration databases, we'll say so. But I don't think that that's where we're going to come out, let me say partly because it's not just a question of technology. There are procedures, processes that can be changed often on a shorter

time scale than changing out the software and changing the hardware and so on that could improve the way in which you operate voter registration databases. And those changes are often easier. Again I'm not promising that that's the sort of path that we're going to take, but that's just to illustrate the kind of issue that could come up in what you're talking about.

**CHAIRWOMAN DAVIDSON:**

And even their laws might have to be changed.

**DR. LIN:**

Perhaps.

**CHAIRWOMAN DAVIDSON:**

I mean hopefully not, but that's a possibility.

**DR. LIN:**

Right.

**CHAIRWOMAN DAVIDSON:**

Okay, thank you, I appreciate that.

Commissioner Hillman?

**COMMISSIONER HILLMAN:**

Yes, good morning. How are you Dr. Lin?

**DR. LIN:**

Hi.

**COMMISSIONER HILLMAN:**

I have a question for you about the makeup of the committee.

**DR. LIN:**

Uh-huh.

**COMMISSIONER HILLMAN:**

I mean I am aware and appreciate that NAS has a process it goes through...

**DR. LIN:**

Uh-huh.

**COMMISSIONER HILLMAN:**

...for the construct of the committee. I think what has concerned me, and what I've heard enough about to know that it concerns others, is that there is nobody on the committee who is an end user, a voter, or an individual who works at the grassroots level representing the perspective of the voter or certainly the constituencies who are most concerned about getting caught up in bad matches on voter registration systems and what that means in real life, not from the scientist/engineering/academic point of view but from the real life point of view. And I guess I liken it to boards of education. I mean for years boards of education determined that adults could very well represent the interest of what was best for students and even on college level boards of education that the person responsible for student affairs, an adult non-student, could represent the interests of students. And that changed because students said, "No. No, that does not -- that is not adequate representation and we want to have frontline direct input into the discussions to bring our perspectives and our interpretations." And it seems to me that that has worked well on behalf of

the communities and the institutions that have sought to do that. So I am curious as to why NAS did not feel that kind of representation on the committee would benefit the overall project, the study and the outcome products.

DR. LIN:

Fair enough. I think that the perspective that you're describing is definitely an important one that informs the nature of the deliberations, and should. I think that we have a variety of ways of creating forums in which to get that input. We have a variety of testimony. For example, in the upcoming workshop we'll have lots of opportunity for testimony to the committee from various voter advocacy groups and so on. So I think that we'll get some considerable volume of information from people who are concerned about the issues about the impact of being denied registration and so on. There's also another process which, I don't remember if I briefed you on this specifically but, you know, all Academy reports have to go through an extensive process of review before they're made public. And certainly the slate of reviewers can include people of the representatives of the sort that -- presumably you're not talking about just, you know, polling a voter off the street but some sort of advocacy organization that works to ensure fair and adequate participation of the electorate. And we look forward to trying to identify those people and getting them to contribute both at this coming workshop, further later

workshops, and especially in the review process. So I don't know if I'm answering your question.

**COMMISSIONER HILLMAN:**

Oh, no, you answered my question. I just want to be on the record to say that I think it was a missed opportunity for EAC and for NAS. And I also realize that NAS works not only arms length but probably, you know, yardstick length distance with respect to the input of the committee, but I just think it was a lost opportunity.

**DR. LIN:**

Acknowledged.

**COMMISSIONER HILLMAN:**

Thank you.

**CHAIRWOMAN DAVIDSON:**

Gavin Gilmour, do you have any questions?

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**COUNSEL GILMOUR:**

I have none.

**CHAIRWOMAN DAVIDSON:**

Tom Wilkey?

**EXECUTIVE DIRECTOR WILKEY:**

Commissioners I want you all to take note that my friend Dr. Lin is wearing a tie today. I wanted to make sure everybody recognized that. And I asked him what the insignia meant on the tie and he said, "I hate ties."

Just a fast question, Dr. Lin. And I know that the committee did not, having been involved in that discussion, did not want to take up the issue, the current status of where everybody is. And I know that that was debated and I know that at the time there was some discussion about an election organization taking over that role. Do you know the status of that right now because I haven't...

**DR. LIN:**

We've been working with -- we've been trying to formulate in a coherent way input to NASAD for them to conduct their own survey. As you know, the incoming president is on our committee and, you know, he said, "Look, you know, if you the committee can figure out what would be helpful to you, we'll try to ask it on the survey that we're going to do." And obviously that was an opportunity that we couldn't pass up, so we're working on that.

**EXECUTIVE DIRECTOR WILKEY:**

Okay, that's great. That's the only question I had. Thank you, Madam Chair.

**CHAIRWOMAN DAVIDSON:**

I appreciate you coming today. And thank you so much for bringing us up-to-date and answering our questions...

**DR. LIN:**

Great.

**CHAIRWOMAN DAVIDSON:**

...and your presentation. So, thank you so much. We'll look forward to the meeting later this month...

DR. LIN:

Right.

CHAIRWOMAN DAVIDSON:

...the 29<sup>th</sup> and 30<sup>th</sup> I believe.

DR. LIN:

Right. Thanks very much.

CHAIRWOMAN DAVIDSON:

Thanks. Next I'd like to welcome David Beirne. David is the Executive Director of Election Technology Council. And I'd like to commend the Election Technology Council for reaching out and hiring somebody that has been involved in elections through the tenure. He not only has been a local but he's worked with a state I believe, county. So he has that relationship that he brings elections into the technology of the people that provide the equipment for voting. And I do feel like that was a step in the right direction of them hiring and having you as their Executive Director. I welcome you in that position and I think that it will definitely be an insight to them and to us as we move forward. And as I said originally, our VVSG is out for comments. I'd also like to say that in the comments that has been received, the public can review those comments before you make your own or you can make your own and review. The comments are

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processed daily, so they're up on our Web site. So those can be reviewed as well as we encourage people to input comments.

So this is kind of an initial review of the Voluntary Voting System Guidelines that you're going to present to us today and we do welcome you here and appreciate your travel in. And thank you so much for coming.

**MR. BEIRNE:**

Well thank you Madam Chair, and good morning Commissioners. My name is David Beirne. I'm Executive Director of the Election Technology Council. In 2003 the Election Technology Council was formed under the umbrella of the Information Technology Association of America. In 2007 it was decided among its members to form itself as an individual 501(c)6 trade association. I'm happy to come onboard as Executive Director. As mentioned by the Chairwoman, my experience is that of a former local election official over the last ten years, serving in two different states and three different counties. I hope to bring my experience as a local election official together with that of a voting system provider to serve as a resource to both the Election Assistance Commission, as well as the entire elections community.

Current membership within the Council consists of Election Systems & Software, Hart InterCivic, Premier Election Solutions and Sequoia Voting Systems. Together our membership comprises approximately 90 percent of the voting systems used in the United States. Membership in the Council is also open to any voting system provider or equipment

manufacturer in other areas of election administration. Anyone who wishes to apply for membership may do so within the Council.

As we move forward with the public comment period, my role as Executive Director of the Council will be to essentially identify the industrywide concerns that are appearing within the Voluntary Voting System Guidelines and then leave it to the respective members themselves to comment on individual impacts to their individual platforms.

Before I move forward into my overall comments and for the sake of the time restriction this morning, I realize my comments -- my written comments were very extensive, so I will be touching just on some various highlights that I've identified, some key concerns that I want to bring together in a public forum. But before I do that I wanted to commend and applaud the Commission for its successes thus far, especially the Quick Start Management guides, as well as the continuing mission you have to serve as a clearinghouse for local election officials.

My understanding is that there's a two-year adoption cycle that's proposed for the new iteration of Voluntary Voting System Guidelines that consists of two public comment periods. Given the aggressive nature of the impact that we are seeing in the new iteration, we feel that this is the minimum amount of time that would be required for proper vetting of public comments from both the industry as well as election officials. So we do feel that it is adequate and certainly more robust than what we experienced in the last iteration.

Speaking to the aggressive nature of the new Voluntary Voting System Guidelines is in particular the elimination of software dependent systems altogether. In fact, the new iteration appears to mandate software independent voting systems across the board. All of the members of the Council currently offer a software independent voting solution namely in the form of a Voter Verifiable Paper Audit Trail. The new Voluntary Voting System Guidelines speaks to this either in the form of a Voter Verifiable Paper Audit Trail or an independent voter verified record basically under an innovation class. That's where a voting system manufacturer could provide or develop new technology that is not previously addressed.

Our feeling as a Council is that it's extremely problematic to eliminate software dependent voting systems in the Voluntary Voting System Guidelines in particular for those states that have not chosen to adopt or require a Voter Verifiable Paper Audit Trail as that is the only technology that is currently in existence.

In particular moving forward in that respect, what does the voluntary model of the Voluntary Voting System Guidelines entail or impact the states if it does inquire (sic) equipment replacement for those states that have not already adopted a Voter Verifiable Paper Audit Trail? If there's an unfunded mandate or replacement cost for equipment, our concern as a Council is that the benefits of the Federal model will be lost if states choose to remove themselves from the voluntary aspect. So we want to bring that to the attention of the Commission in moving forward that there

are consequences that if the Voluntary Voting System Guidelines are too aggressive it may force states to reconsider whether they want to participate in the voluntary structure.

The Council believes that rather than an innovation class as specified within the Voluntary Voting System Guidelines that we should continue to have both a software dependent and a software independent classification model. There are a multitude of benefits associated with software independency, and that's why all the Council members have offered that solution to jurisdictions. But that has not been a product of a Federal legislative or administrative process. That has been customer demand that has dictated that and the vendors have responded accordingly. In fact, I need to bring up also the parallel between the new Voluntary Voting System Guidelines as well as the current pending election reform legislation I'm sure you aware of within Congress which in effect does the very same thing that we're seeing in this new iteration of Voluntary Voting System Guidelines.

We feel that software dependence should not be seen as a pejorative especially in light of the various processes that have already been adopted to address both perceived and real threats to electronic voting systems, namely in the form of pre and post hash code testing, pre and post logic and accuracy testing, parallel testing and post-election audits. Taken together, all of those processes mitigate all of the perceived and real threats when a voting system is deployed.

Another aspect of the Voluntary Voting System Guidelines, the new draft that I want to speak to, is the establishment of open-ended vulnerability testing. This purports to place voting systems subject to a failing grade perhaps at the end of the process after they have gone through review and are subjected to testing by various computer scientists, as well as one election official. The very nature of the OEVT, as documented within the Voluntary Voting System Guidelines, is that each review would have its own threat models established by the reviewer themselves. In effect, the open-ended aspect to it is that the very nature of the threat model is dependent upon the reviewer himself or herself. And that makes it difficult from a voting system manufacturer perspective as to how to determine how the system is being judged. It's very difficult to develop a product when it is a moving benchmark or a moving criteria for how a voting system is going to be certified.

We feel that the discussion of an open-ended vulnerability testing has merit. The election industry has recognized the importance of having third parties come in and develop threat models, and all of my members currently bring in and contract with third parties to come in and review their systems for security. However, the role of the OEVT within the new Voluntary Voting System Guidelines needs to be discussed further and hopefully the role of the voting system test laboratories can be clarified as to one of calling "balls and strikes," not winners and losers. "Balls and strikes" basically being areas of improvement, much more of a

collaborative process as we have seen in years past between the voting system test laboratories or the independent testing authorities and the voting system manufacturers themselves.

We feel the underlying public policy question to the use of the OEVT is what is the threat model? Increasingly we feel that there's a disconnect between the threat model applied to electronic voting systems versus those of paper-base voting solutions as well. We feel that electronic voting systems are being held to an absolute standard, whereas other systems are not. And certainly one area of further discussion could be the use of impact studies to determine what the true impact of the new iteration of the Voluntary Voting System Guidelines could be on the current generation of voting technology.

We feel that proper security should be taken into account in all aspects, including prevention, response and detection. These three components to security we feel apply to all areas of election administration. And prevention, response and detection are certainly benefits that we see with the use of pre-imposed hash code testing, pre-imposed logic and accuracy testing, parallel testing, and post election audits.

One area that we are pleased to see is the usability performance benchmarks. In particular, the voting performance protocol as it's defined which provides for an objective measurement of voting system usability and was one outstanding deliverable from the 2005 Voluntary Voting

**System Guidelines. However, there is one criteria that we feel is subjective in nature and should be not documented, going back to our feeling of the voting system test laboratories calling “balls and strikes,” is that you need to have objective criteria for how you’re determining usability. And in particular the average voter confidence appears to be subjective in nature as it’s asking for the impression of the person using the voting system or reviewing it to provide their initial assessment based on their own viewpoint. We would encourage the EAC not to consider any documented metric which is subjective in nature and again going back to what we feel is the proper role of the VSTLs.**

**One area that we feel should be used to guide the Commission, as well as the Standards Board and the Board of Advisors, is the financial impacts of the new iteration of the Voluntary Voting System Guidelines. There are certain realities within the marketplace that the election providers must adhere to. And the question is what assumptions are we going to respect? Are we going to assume that jurisdictions have unlimited funds to incur costs for replacement of voting systems if that state requires compliance with the Voluntary Voting System Guidelines and we see that it requires and mandates software independent voting solutions? That is a very real issue that needs to be discussed and really brought up and brought to bear.**

**In conclusion, we want to reiterate our understanding of the difficult challenges that you all face in adopting the certification process, the “start-**

stop” model that you had to implement, and we do respect the very challenges that you do confront with this. We also understand that more questions will arise as more and more voting systems are considered under the 2005 Voluntary Voting System Guidelines.

One thing that I did mention in my written testimony is that, what is the role of the new iteration? My personal feelings, as well as the Council members, feel that the 2005 Voluntary Voting System Guidelines have not been fully implemented as of yet and so a number of weaknesses will be recognized, interpretations will be sought, and that needs to be considered as well as we move forward for perhaps possible improvement to the new iteration or whether or not the new iteration is intended to replace the 2005 Voluntary Voting System Guidelines.

We do feel that the overall process for adopting the Voluntary Voting System Guidelines has been greatly weakened from the lack of industry representation. We should take great care to learn from other failed agencies such as the Federal Communications Commission, the Federal Aviation Administration and others who have involved industry representatives directly within their rulemaking process. That is certainly a good model provided, of course, that you do with it within proper venues and with all due diligence to make sure that others are included as well. We just would like to make sure that we have a voice in the process to avoid unintended consequences down the road. While the Voluntary Voting System Guideline model is voluntary they do amount to de facto

regulations we feel and the ETC members believe they should be afforded an opportunity to participate directly in that process, as do other regulated industries in an effort of ensuring fair balance.

On behalf of the Election Technology Council, we do look forward to working with you in the coming months and provide more public comments on the Voluntary Voting System Guidelines. I'm very well aware that public comments from the industry were lacking in the last adoption of the Voluntary Voting System Guidelines, so my role as Executive Director is, I hope, to spearhead a lot of that discussion so that you do have more robust comments from the industry itself.

So with that, that is the conclusion of my prepared statement and I'll be happy to answer any questions you may have.

**CHAIRWOMAN DAVIDSON:**

Thank you very much, we appreciate it. Commissioner Rodriguez would you like to start?

**COMMISSIONER RODRIGUEZ:**

Thank you, Madam Chair. There's a couple of things I guess we should put into the record. We're not allowed to speak to you, Mr. Beirne, outside of a public meeting and I think that's important to put -- or that's our policy.

**COMMISSIONER HUNTER:**

Some people interpret it that way.

**COMMISSIONER RODRIGUEZ:**

Right, that's the working policy more or less of the Election

Assistance Commission. So I think someone might say, why does this entity get access to the Commission? And this could be perceived as extraordinary access to the Commission in this kind of a forum, and it's because most of us believe that we shouldn't be speaking with manufacturers offline in private. And so, that's, I think, important to get into the record from my perspective. And so I start there.

The other concern I've heard and I want to relate to you, and it sounds like you're going to facilitate or you're aware of this concern, but I have heard from a number of people that in previous VVSG comment periods the manufacturers don't comment until the last possible moment and doesn't give anybody else an opportunity to rebut. So first of all, we have your testimony which might give us an indication of what might be some of the comments, so I think that's a step towards a better process with this iteration. But also you might go back to your members, I think Sequoia, Hart and I forget the other one, and just say that the concern had been expressed by this Commissioner that I'd like to see them not wait until the midnight hour but to -- because that just gives people bad feeling - - opinions and to be more forthcoming with their comments. I appreciate that.

**MR. BEIRNE:**

Thank you.

**COMMISSIONER RODRIGUEZ:**

Thank you.

**CHAIRWOMAN DAVIDSON:**

Commissioner Hillman?

**COMMISSIONER HILLMAN:**

Sure. Thank you Mr. Beirne for joining us this morning. I have a couple of questions in no particular order except I'll go on the pages of your presented testimony.

With respect to membership in the ETC, is there any particular reason why the other manufacturers haven't joined?

**MR. BEIRNE:**

We have petitioned them for membership. Others have chosen not to associate with a trade association for their own individual reasons. So previous membership under the -- when the Council was initially formed included other voting system manufacturers, such as Danaher and others. And since the new formation of the Council they have not come back in, but certainly we are not excluding anyone. That is certainly by their own individual choice.

**COMMISSIONER HILLMAN:**

Is the other entity still in existence, the ITAA?

**MR. BEIRNE:**

Yes, that is a well reputable association that is here in Washington, and they are certainly in existence. Their services were fine for the time that they were necessary. We just felt that given the robust development

and the new continuing efforts for new Voluntary Voting System Guidelines that a new approach was necessary and more of a dedicated approach at that.

**COMMISSIONER HILLMAN:**

Okay. In your testimony you talked about financial impact and I am wondering if the ETC has had the opportunity, just for the sake of conversation, to go through the recommendation VVSG that is before EAC now and make some determination as to if those guidelines were adopted as they exist right now that there would be a financial impact of "X" percent on the development of systems to meet those guidelines. Has there been that kind of a detailed analysis?

**MR. BEIRNE:**

No, there has not been. And let me just shed some further light on the deliberations within the Council because Commissioner you do raise an important question. With regards to areas of finances and what the financial impacts are, as a trade association we're very mindful of issues that can come up with potential violations of anti-trust and things of that nature, so we want to make sure that when it comes to establishing price points or looking at what is the cost overhead that must be considered when establishing your unit price at the local level we're very mindful of not discussing that without legal counsel present to guide us to make sure we don't run afoul of the requirements of the anti-trust provision. I think the biggest assessment that they've done is in anticipation of the costs of

the 2005 Voluntary Voting System Guidelines. But as you know my members none of them have submitted for certification under the '05 standards as of yet, they're wrapping up their compliance under the '02 standards. And I think as we move forward we're going to have more of an understanding as to what the financial impacts are and they're going to be significant. And that is what I'm speaking to when it comes to the financial impact down to the user end at the local level, that if you are having a new iteration of Voluntary Voting System Guidelines mandate new technology under a new process there's going to be significant financial impacts to those jurisdictions.

**COMMISSIONER HILLMAN:**

I'm not offering that there will or there won't be. What bothers me is I have an awfully hard time wrapping my arms around "significant financial impacts." That sends tremors through the community saying, "Oh my God, what is the EAC going to do to us?" But it's never been quantified, not by anybody. And so I'm reluctant to engage the dance of "significant financial impacts" unless I can have a sense are we talking about two percent increase, five percent, ten percent, 50 percent, 100 percent? I mean, you know, it could run the gamut. And while I want to be mindful and do a respectful job to make sure that no system would be priced out of the affordability range for election administrators, I can't blanket "significant" because nobody has ever given, you know, an articulated or quantified indication of what that means.

**MR. BEIRNE:**

Now there are some initial estimates that we received and I hesitated to include them because again they're just initial estimates and we can also cause damage if we just throw out numbers...

**COMMISSIONER HILLMAN:**

Uh-huh.

**MR. BEIRNE:**

...that are not backed up. I mean those range, just for pure speculation at this point, at roughly an increase of 200 percent. That's the minimum that we're anticipating for compliance under the '05 Voluntary Voting System Guidelines. That does not include, of course, the addition of open-ended vulnerability testing and other features of the new iteration that we would be seeing.

**COMMISSIONER HILLMAN:**

That's for the manufacturer...

**MR. BEIRNE:**

Yes.

**COMMISSIONER HILLMAN:**

...of the system with or without the certification process?

**MR. BEIRNE:**

With the certification process.

**COMMISSIONER HILLMAN:**

With certification, okay. Well, I would hope that there would be for the benefit not only of EAC being able to make the right decisions but for the benefit of the community, Congress, state legislatures, everybody who has a stake, a financial stake in particular, that we would see some articulation, some willingness of the manufacturers to put in writing on paper some estimated cost because this is, you know, this is a soft conversation and 200 percent says, "Oh my God, throw this baby out because, you know, there's no bath water." But, you know, I'm not sure what it really means. And as you well know, people speculate that that's the manufacturer attempt to derail any further -- anything until the manufacturers are ready to come to the table with a product that it can then represent or sell. I'm not saying that that's a valid assessment or not but, you know, people are getting a little nervous about what the unknown financial implications will be and whether there will ever be known the financial implications.

Design...

CHAIRWOMAN DAVIDSON:

Can I add to that?

COMMISSIONER HILLMAN:

Sure.

CHAIRWOMAN DAVIDSON:

And then I'll come back to you.

COMMISSIONER HILLMAN:

I hope so.

**CHAIRWOMAN DAVIDSON:**

The area I think also that you need to consider is not only cost but the timeframes of developing. As you know, and as I think we all know, our vendors, as we used to call them, which we prefer manufacturers to call them, have always been proactive. What do states need or counties need? And they are developing to what that need is because, you know, of the situation in the past. This makes them reactive in developing something new and developing -- and going out there. After these are adopted I think it's really important to know as we move forward, it's important even sending it back to the TGDC the costs -- what the cost elements are in some of these areas and it's also important to know timeframes. So that's another arena that I would like to send back to your people. It's not a question, it's just a desire that they provide us some information on what kind of timeframe are we looking at to design, to develop, to build, you know, develop and build. And then testing, we'll have to obviously talk with test labs. We plan on having more public meetings on these issues, but this is one that we'd like to see you start working on.

**MR. BEIRNE:**

Madam Chair, we have worked with Capitol Hill and Congressional staffers namely in regard to the election reform bill that's pending, to outline the concerns from an industry perspective what our timeline is. And currently from start to finish for the research and development,

product implementation, certification at the federal and state level, we're looking at anticipated windows of up to 54 months. Some manufacturers may be able to reduce that timeframe, but generally that's the benchmark that was established within the industry. And we have circulated, and I'll be happy to share that with the Commissioners.

**CHAIRWOMAN DAVIDSON:**

That would be very helpful. And does that include testing in that process?

**MR. BEIRNE:**

Yes, it does.

**CHAIRWOMAN DAVIDSON:**

Okay. That would be very, very helpful. Thank you. Commissioner Hillman?

**COMMISSIONER HILLMAN:**

Say what that timeframe was again, I'm sorry.

**MR. BEIRNE:**

54 months.

**COMMISSIONER HILLMAN:**

54?

**MR. BEIRNE:**

Four-and-a-half years.

**COMMISSIONER HILLMAN:**

Okay. In your conclusion section you said that ETC believes that the VVSG should not prescribe design standards, only performance standards. Can you give me an example or two in the VVSG we're looking at that you would consider design standards?

**MR. BEIRNE:**

Again I've only done an initial review of the entire draft at this point, but one of the things that did jump out at me is within the usability section. When it comes to the ability for individuals to, I'm trying to think of a best way to explain this, essentially -- especially for a voter with minority language needs that if they select a ballot in an alternative language, the way it's written within the new iteration of the Voluntary Voting System Guidelines is that the capability for that user to toggle, if you will, or effectively switch over to an English format of that ballot while initiating initially the alternative language ballot itself to begin with must be in place. And I can tell you that most systems do not currently permit that. For us that is a specific design requirement from the user end that is being prescribed with how the system should look and feel. This is also detailed within sections that require volume adjustment controls in certain areas or in how the buttons should appear and how a voter should navigate on that system. Rather than -- realize there's a balance that needs to be struck between overly prescriptive requirements but also requirements that can be tested against. So that is the challenge that you as the Commission faces, as well as the TGDC and others in how to develop guidelines that

bridge that gap. But essentially that's just one example that I can think of in which it speaks to specific requirements as to the look and feel and how it should function for the user end. And those are things that we would like to see avoided within the Voluntary Voting System Guidelines.

**COMMISSIONER HILLMAN:**

Then my final question is, are you able to share any insight as to the role that the manufacturers see, the voting system manufacturers see in the entire process? And I don't just mean comment on this version of the VVSG but in the development of products in the field.

**MR. BEIRNE:**

I'm not sure I understand the question.

**COMMISSIONER HILLMAN:**

Well, in some sectors the manufacturers have taken on the role of assessing what the needs of the consumers are and saying, "We believe this product will address these needs because of X, Y and Z," and in fact educating government and consumers as to why path "A" is better than path "B" not only from affordability but maybe durability and whatever other standards there may be. Other manufacturers are reactionary and they wait, you know. They'll make a design and they'll wait to see if the customer really insists there needs to be a grip on the water bottle, and then you get into the whole environmental discussion and what products should the water bottle be on and pretty soon I'm sure that it will be like having a water bottle will be like wearing a fur coat because of the

wastefulness that's perceived in having these water bottles. So I'm wondering what the voting system manufacturers see is their role in the whole evolution of voting systems from today going forward.

**MR. BEIRNE:**

Well I think that they all can stand alone on their record, especially when it comes to the adoption and development of a Voter Verifiable Paper Audit Trail. There were concerns from the beginning in which the manufacturers themselves said, "This should be used for auditing purposes because it was not included within the original design framework and it's going to have its own concerns associated with it." But going back also to your other concerns is that I know all of my members are very aggressive with receiving feedback among their users and hosting users group meetings and hearing about what improvements they can make to the software, whether it's improvements to how the text should appear on the machine, to increased usability, to the reporting aspects, new reports that can be featured within the tabulation software itself. One of the limitations however with the responsiveness of the industry to those concerns is really the different nature of the certification process that we're experiencing now. And certainly I think one of the compounding factors as we approach the 2008 election cycle is that there have been state mandated changes within their voting system architecture and so the vendors have attempted to address that with new versions. Taken that combined with the certification process at the federal level if that state requires it, the very

real potential is that in the 2008 primary cycle because of the timelines that are just natural with the certification processes at this point they're going to have develop workarounds to, you know, adopt and accommodate those state legislative changes. So as much as possible they are responsive -- I guess going back to your original question -- they are extremely responsive but they are limited with how expeditious they can be with addressing those concerns. They have to look at it from the standpoint of releasing new versions and making sure they do it on a timetable to maximize their investment and to keep costs down. And that's the natural - - that's the nature of the beast, so to speak, when it comes to developing a product and making sure that it's viable within the marketplace.

**COMMISSIONER HILLMAN:**

Thank you.

**CHAIRWOMAN DAVIDSON:**

Commissioner Hunter, it's your turn.

**COMMISSIONER HUNTER:**

Thank you. Thank you Mr. Beirne for coming this morning.

**CHAIRWOMAN DAVIDSON:**

Thanks for being patient.

**COMMISSIONER HUNTER:**

Oh, no problem. So the way I see this new iteration of the VVSG is that it gives us all a chance to, in a sense, start from scratch because a lot of what you just said, things were done in a Band-Aid approach, you know.

As soon as HAVA was passed people ran around and bought things that arguably weren't sort of ready for primetime or then the state laws were passed that you had to add a paper trail onto something that wasn't initially, whatever the technical word is, wasn't initially programmed to do so. And I think there's a lot of that. So the way I see this next iteration is kind of a chance for us all to start over. Obviously when you say those kinds of things you are going to have to argue that the implementation date be way off, and obviously right now our public comment period the whole process right now will take at least two years. So we're not talking -- I don't think anyone here is talking about something that's going to take effect, you know, in the next three years or something along those lines. Clearly, in my view, there needs to be a lot of time to develop things. And so along those lines, as you well know, the new iteration of the VVSG requires software independence both for what I call the paper trail requirement and for the innovations class. So I'm very curious to hear from the vendors, the manufacturers, what are their thoughts on the viability and the feasibility of the innovations class. Because if certain people are of the mindset of paper trail is not the way to go for whatever reason, and I think for the reasons that have been talked about, then let's look at the innovations class and find out is it really feasible. And if it's not, that's something we should know and we should call it what it is because if it's not feasible then we're essentially mandating paper for the future of electronic voting and that's going to be around for a long, long time. And if that's the only way to

do it, then we shall see. But I'm told by talking to people, just sort of, you know, back-of-the-room conversations with computer scientists and others, some will tell you that any kind of new system that would come through the innovations class would take five to ten years. Others say ten to 15. I've even heard 20. People from NIST have said at least 15. So I really don't know what the answer is. Obviously there's no definitive answer, but I'd like to know how long would that take and what -- how is it financially feasible? How is a company going to spend the research dollars that it would take to develop a new system with no guarantee that that system will later be certified?

**MR. BEIRNE:**

Right. And I think the concerns you bring up are very much the same ones we've identified. The innovation class section really remains completely undefined and that's why we'd rather see, just as it is in the '05 guidelines, software independent or software dependent classification. It's either/or. Essentially you would still be able to develop an innovative product that would be software independent but not relying on paper. That would certainly be within the realm...

**COMMISSIONER HUNTER:**

Software independent that doesn't rely on paper?

**MR. BEIRNE:**

That would be the innovation class as it's currently drafted.

**COMMISSIONER HUNTER:**

Right. And what -- can you think of anything that would meet that?

**MR. BEIRNE:**

Again it's an unknown. I think it was much more of an escape hatch that was put into the new draft of the Voluntary Voting System Guidelines so as not to be seen completely mandating paper across the board when in effect that's the only solution that's available.

**COMMISSIONER HUNTER:**

I realize it's the only thing that's available now, but do your researchers or anyone like that could they opine on what might be available in the future under that innovations class that's not paper-based or that is paper-based but is somehow different and more manageable?

**MR. BEIRNE:**

I think there are some areas that -- there are some other providers that are not necessarily members of the Council I think that may offer solutions that are close to what they envision with the innovation class, but beyond that it's really an unknown. And I think that where we are currently within the industry is that we are looking at where we are now. And I think looking forward to down the road if the Voluntary Voting System Guidelines were adopted as they are written now and of the states that require federal certification, at least I believe approximately eight to ten of them would be forced to go to paper as the software independence depending on when the Voluntary Voting System Guidelines went into effect and products had to be certified to those standards, which goes back

to our original concern which is to have both the '05 standards as well as, you know, if the new iteration is adopted as it's drafted to run simultaneously or concurrently and allow states to choose which guidelines they wish to adhere to. New York is a good example of how they have specified the 2005 Voluntary Voting System Guidelines for compliance, but as of now I don't know of any system that has been certified to those standards. So those are very real concerns that all have to be taken into consideration. And I think going back to your point, the innovation class I haven't had a thorough discussion with my members as to really what the feasibility is or the timeline. Certainly no less than five years and I would say probably ten to 15 before that would be even considered. The question though remains is how much there is the will at the local level among the customers to purchase such a product.

**COMMISSIONER HUNTER:**

But that would -- I mean assuming that it's already been through the certification process, I would assume that they'd be more willing to purchase it I think. So the question for me is sort of on the beginning, how do we know that anybody is even going to spend the time and money to develop such a system?

**MR. BEIRNE:**

Well and those are the natural risks associated with making an investment for the future and trying to dominate the marketplace by developing a product that addresses all of those concerns and does not

rely on paper. And certainly that's the benefits of a competitive marketplace, and certainly one individual vendor may look at it and say, "That's exactly what we want to do and pursue." I think the way the innovation class is written, however, it's so open-ended it provides a new process in which there's a separate review for what is considered innovative. And I think just keeping it simple between software independence, which doesn't limit the ability to develop new products, as well as maintaining and recognizing that software dependent machines are not necessarily a bad thing, that a number of industries have software dependency but they have systems in place to verify and proceed and make sure that the software that is in place, just as we did with hash code testing and certification to make sure those products are viable.

**COMMISSIONER HUNTER:**

So you also mentioned in your testimony threat assessment, and arguably the VVSG was not premised on any kind of thorough threat assessment. There were some workshops and that's all detailed on the NIST Web page, but there's not a sort of one document that is a risk assessment that was used to develop the VVSG, from what I understand. And so I'm wondering what is your recommendation if we decided that we wanted to move in that direction to get some kind of threat assessment to help us ascertain what's the best way of going? Who would you recommend? Who typically does that sort of thing in this industry?

**MR. BEIRNE:**

To develop a proper risk assessment as to...

**COMMISSIONER HUNTER:**

Uh-huh.

**MR. BEIRNE:**

Well, I think including election officials certainly first and foremost is critical to any process in which you're identifying threat models.

Unfortunately, given experiences within certain states, such as California, relying entirely on one segment of expertise in the form of a computer scientist -- and that was one aspect of the open-ended vulnerability testing that is a good thing -- is that it does at least require the presence of one election official. However, I think that's one thing that's missing from developing a consensus within the threat model. If you include election officials and computer scientists and even the industry representatives themselves, they can more thoroughly review what is a realistic scenario and perhaps develop a ranking as to what threat models are most realistic, much more of a perceived nature, and those things. So that not only are the substance of -- not only is the substance of voting technology addressed but also the perception, because that does impact voter confidence and that's a very real concern for my members as well. So I think just having a more thorough discussion and not relying on just one facet of electronic technology to feel whether or not the concerns are being met. In my testimony I referenced that the threat model that's being established for electronic voting systems seems to be entirely different

than any other voting solution. From an election official perspective, I think there are well known concerns with paper balloting at the polling place. Those issues and concerns are not discussed with regards to electronic voting systems. Issues of ballot stuffing at polling places and things, those are threats for any voting system whether they're paper based or electronic. And I think that's where a robust discussion and actual<sup>y</sup> some sort of consensus from the EAC and others as to what is the appropriate threat model, and I think that's important and that underscores the weakness of not having industry representatives at the table to say, "Where are we currently with our technology so that we can better understand where we move forward to?" And I think there's still a lot of issues and a lot of systems that are currently in place that are not given the credit for preventing and detecting any attempts to, if you will, hack into a voting system.

**COMMISSIONER HUNTER:**

Because of the guidelines or the management guidelines or whatever are used in conjunction with the machine?

**MR. BEIRNE:**

Essentially, yes.

**COMMISSIONER HUNTER:**

Okay. Well, the same resolution in December of '06 that adopted the concept of software independence also references the fact that there are systems out there now that are obviously not software independent and

that those are okay in the terms of the TGDC members as long as the EAC election management guidelines are used. So I think that the TGDC recognized at least that even if one were able to hack a machine, you know, the reality of it is that there are safeguards to prevent that sort of behavior.

**MR. BEIRNE:**

I didn't see that mentioned in the new draft of the Voluntary Voting System Guidelines. If that provision is there to enable...

**COMMISSIONER HUNTER:**

No, it's not in the VVSG. It was just in the resolution back in December of '06, but I don't recall that it's mentioned in the VVSG. Thank you.

**MR. BEIRNE:**

Right.

**COMMISSIONER HUNTER:**

Thank you.

**MR. BEIRNE:**

Thank you.

**CHAIRWOMAN DAVIDSON:**

Is it on their Web site, though, correct?

**COMMISSIONER HUNTER:**

The resolution I think is on their Web site. On this Web site.

**CHAIRWOMAN DAVIDSON:**

Any other questions?

**COMMISSIONER HUNTER:**

I don't have any questions at this time. Thanks.

**CHAIRWOMAN DAVIDSON:**

One of the things that you -- that was in your testimony and I'd like to see if you would explain it to me is the statement regarding the VSTL role as being to "call balls and strikes," not winners and losers. Can you clarify what you're exactly meaning in that?

**MR. BEIRNE:**

Well, I think one of -- the main context of that was with regards to the open-ended vulnerability testing, and that the way it was structured within the new Voluntary Voting System Guidelines is that it's unclear as to when in the process the OEVT would occur and it's a very real possibility that the certification process would be moving at the same time as the OEVT. And although it would be compliant with all of the certification requirements it would fail the open-ended vulnerability testing, and it remains unclear as to whether that it's concrete stoppage of the certification process resulting in a failure and whether the equipment manufacturer would have the ability to address those concerns and to keep the certification process moving forward, doing so in a situation where it's not necessarily fully disclosed to the public, so it allows and respects the role of the manufacturer to respond to those concerns and to keep the process moving forward for them to, you know, certify their new software versions or firmware versions and keep the products moving. That's really what the concern was. We

realized that the VSTLs are intended to determine compliance and certification, but that was really mainly to refer to the open-ended vulnerability testing and to make sure that they understand that their role is to call “balls and strikes.” What are the areas of improvements? Where are you lacking? Where are you not? As opposed to just simply saying, “Here’s a winner and here’s a loser. Here’s a pass/fail, you know, situation.”

**CHAIRWOMAN DAVIDSON:**

As you’re aware, and we’ve even talked about it today in the report that was given by Mr. Wilkey, we have adopted a policy as the Commissioners to move forward to put voting system studies and reports up on our Web site that have been adopted either by a state or a local election official. And I don’t have that in front of me. I guess we should have had that available to hand out again, but it is on our Web site. And California was our first one that we have put up. One of the things that we want to do in the clearinghouse is always make our election officials and our stakeholders aware of any issues or problems. And there has been some things that have come up lately and questions asked of us and people wanting us to make things available that really we don’t have the authority to make available at this time because we didn’t certify the equipment. As you’re aware, the equipment that is being utilized by the states currently has not been certified. In the future, underneath our program in signing that you are actually manufacturers and you have

registered with us it was also during that statement registered that you would report any anomaly that you found in your system to us in a report so that we can put that up in our clearinghouse, our reports. How do you think that your manufacturers would feel if we would put forward a policy asking for the manufacturers to provide us any statement that they give to their locals or states on their equipment so that we can make others aware of that also? Obviously it has to provide a great deal of information so that it's just not taken out of context; the software, the firmware, whatever it might take, you know, but going ahead and indicating what those issues might be before we have equipment out there that has been tested by the EAC. I hope I've made this clear, you know, because we do have two different timeframes. We have the timeframe when we have it and we can make it available to the public. And then we have this period, this little complicated period where people think we have the authority but we don't because it wasn't certified by us and we don't have the authority to, you know, obviously decertify something we haven't certified. Or we wondered about even putting it up on the Web, the information. How do you think your people would feel about us moving forward with a policy requesting the manufacturers to provide us any information concerning equipment that they were notifying a county or a state?

**MR. BEIRNE:**

I'm not really sure because -- I know the situation you're referring to and I'm not sure what their initial impressions or concerns might be. I

think one thing I have heard, however, is in the role of the clearinghouse of information from the EAC standpoint, keeping in mind that would be a state matter, is the question of fairness and to make sure that proper diligence is given to all stakeholders to respond to these situations that even though a state-driven effort -- let me back up. A clearinghouse is really only as good as the information that's being stored and disseminated. Proper vetting of that information, making sure that you allow for comment back and forth and for dissenting viewpoints as well, which I think goes to Commissioner Hillman's question at the beginning of the hearing, I think those are critical.

And I think that even -- there's a dispute within, in particular, I think, the State of California, is what you're referring to Madam Chair, and in that instance I believe there's a disagreement among some of the participants as to their opinions as to where they are currently. And I think that if you were to move forward for some sort of correspondence from the vendor, or from the manufacturer, I would make sure that you at least allow for a good robust, you know, dissemination of information that includes a response to address concerns so that it's not portrayed in one way, because oftentimes the industry is misrepresented and not afforded the opportunity to address concerns and to set the record straight.

**CHAIRWOMAN DAVIDSON:**

It wasn't the California issue that I was referring to, it was some reports that we had had by, you know, people that there might be an issue with some software that's out there.

**MR. BEIRNE:**

Right.

**CHAIRWOMAN DAVIDSON:**

So it wasn't California, just to make sure that you understand that. Do you think that your manufacturers will provide information to us concerning, you know, initially involving the states, obviously telling them that there's an issue with their software or something they've got to do to come in? We've got Presidential elections coming up very soon and to make that information available to other election officials we think is very vital, and we feel that that's part of our clearinghouse in some respect. So that was what it was concerning.

I am going to explore this further. I'm going to explore it with the staff and see if they can't craft language to either amend our current policy in separating out the issues that we need to take into consideration your comments that there should be some type of comment, we'll look into that. But, you know, this is an issue I think that we need to move forward and to look at and after looking at it and being advised by the staff I may call for a tally vote. I just wanted to make sure that this was addressed in the meeting so the public is aware of it, and we will proceed and study it more thoroughly.

**MR. BEIRNE:**

If I may just add a few things that just came to mind with concerns moving forward if you do proceed with that policy which we certainly

respect the need for, especially as products are EAC certified, that you certainly have a role to make sure that the states affected would have proper notification, although all of the manufacturers do make sure that they provide notice to the extent possible.

One of the concerns that just, you know, came to mind was that each state may have a different software version and so...

**CHAIRWOMAN DAVIDSON:**

Understandable.

**MR. BEIRNE:**

...from a public advocacy standpoint there may be some misperception or miscommunication with that information that is out there and available. And just making sure that the proper disclaimers as to who is affected, you know, what software versions and making sure that's very clear I think would be critical moving forward so as to not perhaps cause a panic in other states that are not subject to it.

**CHAIRWOMAN DAVIDSON:**

Absolutely. And that's the reason why I said it would take a great deal of information. It would take the version of the software probably. And, as you say, if it's only utilized in one state, and a lot of times because of state law there is a version for a state that has been tested. So I understand that completely it has to be specific because we don't want to give out indication and flood the concerns that there may be issues out

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there that nobody is -- it doesn't even involve them. So I understand that completely.

**MR. BEIRNE:**

And I'll take back your concerns and so hopefully I can have a response from the Council as to our feelings about how best to move forward and address what -- your concerns.

**CHAIRWOMAN DAVIDSON:**

I'd appreciate that right away if they would, please. Is there any other questions? I know we need to take a break.

**EXECUTIVE DIRECTOR WILKEY:**

Do you want to wait until after the break?

**CHAIRWOMAN DAVIDSON:**

Yes. Would you mind -- we need to take a break for our people that are doing our transcribing and, you know, all of our work for us. So we'll take a 15-minute break, come back and get -- Commissioner Rodriguez has some additional questions, do you?

**COMMISSIONER RODRIGUEZ:**

No.

**CHAIRWOMAN DAVIDSON:**

No? Well, our Executive Director Tom Wilkey and possibly our Counsel. So if you will come back to the podium in a little bit we'll get started back with you. Thank you. We'll take a 15-minute break.

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[The Commission recessed at 11:36 a.m. and returned to open session at 11:55 a.m.]

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**CHAIRWOMAN DAVIDSON:**

We're going to go ahead and get started. If we could have everybody come in and take their seats. Okay, I think that we're ready to get started.

So Mr. Wilkey would you like to address your comments to Mr.

Beirne?

**EXECUTIVE DIRECTOR WILKEY:**

Yes, I do have -- thank you, Madam Chair. I do have one question I will ask about...

**CHAIRWOMAN DAVIDSON:**

You might pull your microphone a little closer.

**EXECUTIVE DIRECTOR WILKEY:**

I wanted to make sure that both Mr. Beirne representing the Council and our guests in the audience understand, and I think Commissioner Hunter reflected on this, that this is going to be a long process. This is going to be at least, at minimum, a two-year process and perhaps even longer. And then when you add to it whatever date we decide to do implementation, it could be even longer than that. And we did so because of many of the issues that you addressed in your testimony that we're hearing from the election official community, from the advocacy

community, and so on. We want to have this right. We want to it last for a long time.

With that in mind I also want to remind you in the audience that in addition to the two 120-day comment periods that we have structured into this review that we will also be conducting a number of hearings. And those hearings will be specifically designed to receive testimony, not only from your organization but from the disability community, from the advocacy community, from the election community and from others so that we can get some real defined comments on this. And so I would urge you, as you've been urged by the other Commissioners here, in the past -- and having been around this effort for a long time -- in the past we've always noted that the manufacturer community has been a little slow and sometimes even a bit shy to provide the kind of public comments that we need in order to make this document a real good, solid piece of work on behalf of the Commission, on behalf of the voting public really. So we hope that the manufacturers will be actively in this period and will be working with us as we move along.

With that in mind I just had one question about a statement you made near the end of your testimony in which you say, "In its entirety, ETC believes that the VVSG should not prescribe design standards, only performance standards." And that puzzles me because of all of the issues in this document, and we all have our own individual interests between the Commissioners, between staff. Mine has always been in the area of

usability, readability, those issues that I think are in the final analysis some of the most important. And I don't know how you can say that we should not be addressing design standards when it is so tied to the usability issues that in a previous statement you appear to say we are doing a good job in that area, because one pushes the other. Could you elaborate on that just a little bit more David?

**MR. BEIRNE:**

Well, our overall support for the establishment of the voting performance protocol speaks exactly to the establishment of how the systems are going to be judged for usability. That really speaks to the performance standards as opposed to the mechanics of how you're going to go about achieving it. And I think that's really where we draw the distinction. The overall gist of our comments in that regard is that it should allow for proper flexibility from the manufacturing standpoint to allow them to develop innovative means to achieve that usability. And if it's too prescriptive -- and I realize it's a very fine balance that has to be struck between, you know, what is the design standard, what is the consensus for how to achieve that usability versus trying not to make sure that all the systems look exactly the same. Any time you have a competitive marketplace you benefit from having those features in perhaps innovative ways to accomplish them. And so that's really where we speak to not going so far beyond establishing the performance protocol but actually dictating how those systems should look and function. And I think that's

pretty well covered within the usability section in which it really goes into detail as to how the system should look to achieve that usability aspect, whereas in the performance protocol you have metrics that are going to be used to judge their success or lack of success in achieving the usability feature.

**EXECUTIVE DIRECTOR WILKEY:**

Okay. I just wanted that design because we have, particularly in this interaction, there was a great deal of work put into the usability part of this document. It is something that was needed above and beyond the 2002 and the 2005 and is critically important. But, again, many times a design feature will greatly impact the usability overall and can cause some real problems. So that was the area that I was looking at.

One other general -- if you could make one other general comment because as I think Commissioner Rodriguez indicated, you know, we are very careful about our interaction with manufacturers, manufacturer representatives because at some point in time we're all going to be involved in approving various documents for certification. And so we try to keep that line there. Unfortunately sometimes it impugns our ability to be able to go out and look at what's going on in the industry as a whole. And do you find at this stage that manufacturers are kind of in a "let's wait and see" mode? Or do you see at this point new things coming into the marketplace, new innovations, new designs coming in? Or do you see now

that there is kind of a “let’s wait and see what happens with getting the 2005 done and then into the next iteration”?

**MR. BEIRNE:**

From -- I would say overall there’s definitely a “wait and see” approach giving what’s not only occurring within the EAC framework but also what’s occurring within Congress as to what the next generation of technology is going to look like. I think that some of my members are moving forward with innovations in other areas to increase efficiency at the polling place, but with regard to voting system architecture I think that’s pretty much a “wait and see” just given the anticipation of the 2005 Voluntary Voting System Guidelines, as well as consideration of the next iteration.

**EXECUTIVE DIRECTOR WILKEY:**

Thank you, sir. Thank you, Madam Chair.

**CHAIRWOMAN DAVIDSON:**

Mr. Gilmour, do you have any questions?

**COUNSEL GILMOUR:**

I had two clarifications I wanted to make. And the first one dealt with -- you were throwing -- I know these were ballpark numbers you were throwing out. That this was a, for lack of a better term, sort of guesstimates. But you had suggested a 200 percent increase in that area, and I wanted to make sure which standards that was applying to. Was that a 2005 analysis or was that an analysis of the next iteration?

**MR. BEIRNE:**

That's the 2005. No analysis has been done on the newest iteration.

**COUNSEL GILMOUR:**

So I just wanted to assign that number its proper place in the discussion.

I also had a question I'd like to follow up on, a question that the Chair had asked, and that involved the "balls and the strikes," winners and losers portion of your testimony, which was very catchy but apparently it drew a lot of attention. But my question really had to do -- it dealt with the open-ended vulnerability testing. And I think I understood your response, but you will see in light of EAC's recent activities, and I think when Mr. Hancock gets up here and starts discussing our program, the EAC has taken some very strong measures to enforce its position of VSTL laboratory independence from manufacturers. It's a very big thing and I know from some of the manufacturer's statements they agree with that, at least in part, maybe not fully. But we want to keep that process independent. So, in other words, also the idea that a certification program is in some ways distinct from product development. And these are things that the EAC has stated and taken action on. What I'm trying to do is get a bit of an understanding based upon I think some of the statements you made within this OEVT context and your statement with respect to the VSTL's role and their questions. Keeping these policies in mind, are we talking about the same thing? And also essentially how does that fit in?

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How can we make -- how does that sort of stated goal of EAC to create an independent test authority link with your comments about “balls and strikes” and winners and losers?

MR. BEIRNE:

Well, I think the role of the independent nature of the Voting System Test Laboratories can best be served by, you know, assessing independent of influence of manufacturers to say, “These are the standards that you did not meet. We need to see these following changes to your system in order for your product to be certified successfully.” What the OEVT seems to be implying is that there’s a shift in the model that’s being applied in certification to much more of pass/fail criteria and that’s for us, from our standpoint, that is a dramatic shift from the days of yore, before the EAC adopted the certification process in which the ITAs or the VSTLs would identify problem areas and allow for a response and then perhaps improvements to allow for that product to maintain its continuing evolution through the certification process. The “balls and strikes,” and that’s the problem with catchy phrases is oftentimes they do gather attention, that’s really speaking to whether or not, and perhaps just serving as guidance for the Commission in moving forward, whether or not that is an acknowledged shift in how the VSTLs are going to approach, which is much more, almost antagonistic to say, “We are reviewing your product for compliance.” But also, you know, there is a certain investment that is made by the manufacturer to see that their product is certified. And that all

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gets taken into account when establishing price points for the user. And so if that's a dramatic shift, I think there's a number of policy questions that need to be considered by the Commission on the role of the VSTLs and how that certification process should be continued to be financed and how best to balance all of those needs.

COUNSEL GILMOUR:

So is your concern that this section may not be pass/fail?

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MR. BEIRNE:

My concern is that the OEVT section is pass/fail. It's not very clear as to the sources of remedy available to manufacturers that if they were subject to a failing criteria their ability to respond to the OEVT and make adjustments to their system before damage is done to their individual investments of marketing their product if it becomes public knowledge that the system has simply failed for these vulnerabilities without allowing, one, the manufacturer to respond with their own opinions or to address those concerns before they lose all of that product investment.

COUNSEL GILMOUR:

So how would that be different than any other pass and fail within any other area which would be reported as well in the ultimate test report?

I guess what I'm saying, is there is a distinction in this area versus other areas where there might also be a documented failure that would also be made public? Is there a issue that we need to be aware of with respect to this?

**MR. BEIRNE:**

No, I mean I think the intent is not to indicate that you shouldn't be deciding what should be accepted or certified or not. We certainly respect that role of the EAC. I think it's -- and if there's no due diligence in response from the voting system manufacturer to comply with concerns as they're brought forth, then certainly it's within the merits of the certification process to deny certification. I don't think that's going to be the fundamental shift. I think if the OEVT is intended to provide a black and white pass/fail criteria, that's the real concern. We just would like to make sure that there's an avenue for a response mechanism and for that process to move forward with, you know, the manufacturer addressing it. And if they fail to do so, then of course we would expect that the product would not be certified.

**COUNSEL GILMOUR:**

That's all the questions I have.

**CHAIRWOMAN DAVIDSON:**

Okay. Thank you very much. We appreciate your testimony and your answering the questions. And we look forward to the next time, as we said, the public meeting that we're going to be having with manufacturers and gaining more information. So thank you.

**MR. BEIRNE:**

Thank you Commissioners.

**CHAIRWOMAN DAVIDSON:**

Next on our agenda we have Brian Hancock. Brian is the Director of our Testing and Certification of the EAC and he's been here many times before us and this time is a little different subject. And he's worked very hard, along with the rest of the staff, on providing us with a **C**ertification Manual for the laboratories. So obviously this is the first step and I think it's very close to going out for public comment that we did on our other Manual for certification for the manufacturers. So we look forward to it, Brian. We know that you've worked hard on this and we're anxious for -- it was my goal that it would be done before I ended my Chairmanship, but obviously getting the comments from the public is very important. So this we will make sure is done as soon as possible. So Brian, welcome.

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**MR. HANCOCK:**

Thank you, Madam Chair. Commissioners, good morning. And I'd just like to say I am here to talk about our draft Laboratory Accreditation Program Manual. I do just have to just make a quick note to thank everyone here on the staff that's assisted with this project, and that includes our Counsel **Gavin** Gilmour, Matt Masterson, Lizo Terro, and a number of other folks. It was a collaborative effort as it usually is around here.

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I'd first like to talk about the process that we're going to be going through before the Commission votes to adopt the Manual and then I'll give you some -- a very abbreviated look at each of the chapters to see what is contained in this Manual. And I should say we're going to go about this in

exactly the same process as we did to adopt the Testing and Certification Program Manual. It seemed to work very well, so we're going to be doing that once more.

The EAC will publish the Lab Accreditation Manual in the Federal Register for a 30-day public comment period. I think it's important to note that this is not a -- "this" the public comment period -- is not a required function or publication for us, but we are doing it as we did last time to make sure that the entire process is open and transparent to the voting public and everyone else out there. Staff, of course, will then review each of the comments we receive and incorporate the appropriate comments into the final draft of this Manual. The Commission, of course, will vote to approve the final document, as you did for the Testing and Certification Program Manual. It's important also to not forget that this document is going to be simultaneously published for a required 60-day initial comment period to receive comment on the paperwork burden that's placed on organizations required to report information to us under this program and to have the Manual approved by the Office of Management Budget under the Paperwork Reduction Act of 1995.

I'll talk to you a little bit about the Manual itself now. We have seven chapters in this Manual. The first chapter is basically an introduction and it talks about background information, the authority of the EAC to undertake this program. It talks about the scope and content of the Manual and it has a definition section.

To my way of thinking, I think really the most important information is probably contained in the second chapter of our Manual and that is the program requirements. And I'm going to concentrate most on this area because I think it is really where the EAC is going to provide the most value-added to this program. We have a number of requirements listed here. The first two that will always be a requirement are a NIST recommendation, as it says in HAVA, and a NVLAP accreditation. Those will be two things that we will require always before the EAC looks to accredit any voting system test laboratory. We have what I think is a very important conflict of interest and prohibited practices program in this document. And we define conflict of interest as, "A prohibited conflict of interest exists if the duties and responsibilities of a laboratory, their parent corporation, or a lab employee involved in the testing of voting systems under our program will have a direct and predictable effect on the financial interest of the laboratory, parent corporation, or lab employee."

As far as prohibited practices is concerned, we very explicitly state that no laboratory, their parent corporation, or employee may: Provide, or have provided, consultation, developmental testing or other services to a voting system developer/manufacturer such that the independence or the appearance, even the appearance, of independence in the testing of a particular voting system component would be compromised. Also, no lab, parent corporation, or employee may solicit or receive a gift, directly or indirectly, from any entity which holds a financial interest in the

development, production, or sale of voting systems, or is otherwise impacted by the testing and certification of voting systems.

We have a number of program enforcement elements as well. The first of which is the fact that we require labs to collect standard information from each employee, and these include assets, debts, outside or prior activities/employment, gifts, and any work on voting system development that they have done sufficient to demonstrate compliance with the Manual. We look at all those things to make sure that the lab is compliant. The information collection that the lab does must also reflect the financial interest of those individuals, such as spouses or minor children, whose interests are imputed to the employee under our Program Manual. Continuing with the enforcement elements, the Manual requires and documents the review of information collected for potential conflicts and prohibited practices; and the labs must resolve and document any and all identified conflicts of interests or prohibited practices prior to the employee or the lab's involvement in any testing engagements under our program.

We also talk about personnel policies of the laboratories. We require that all labs have in place written policies to ensure that the lab does not employ individuals, in any capacity related to the testing of voting systems, who have been convicted of a felony offense or any criminal offense involving fraud, misrepresentation, or deception under either federal or state law.

We also have the ability to do site visits under this program. As a condition of accreditation, all laboratories will allow the EAC or EAC representatives to enter their voting system testing and management facilities. We also require them to provide us notice of lawsuits. Again as a condition of accreditation, all labs need to provide the EAC notice of any lawsuits or claims filed against it, its subcontractors, subsidiaries, employees, officers, owners, operators, and insurers. Essentially anyone that has direct dealings with that lab. Finally, we also outline additional steps to ensure that the labs, one, are not prohibited from doing business in the United States, that they allocate sufficient resources to enable them to properly use and maintain their test equipment, their personnel, and their facility, and that they maintain insurance policies sufficient to indemnify themselves against financial liabilities or penalties that could result from their operations.

We go on in the following chapter to talk a little bit about the accreditation process itself. We basically set forth the required steps that all applicant labs must perform in order to receive an accreditation from the EAC. The process generally includes an application for and a receipt of a NIST recommendation, as I noted earlier; the receipt of an EAC invitation to apply to the program; and a successful submission, acceptance, and review of the EAC application. Successful applicants will be recommended for approval to the Commission. As required by HAVA, the full

Commission will vote, as you all have for the current laboratories, to accredit those successful candidates.

Another very important aspect is outlined in Chapter 4 of this document and it's compliance management program. Essentially the purposes of this chapter are to provide mechanisms to improve the EAC's Testing and Certification Program, to increase coordination, communication and understanding between the EAC and our voting system test labs, and to increase public confidence in elections by facilitating voting system test lab accountability. These will be accomplished by gathering information in three major areas. First, the labs are required to notify us of changes that they have, and by "changes" I mean any change to key personnel, whether that be management or technical personnel, any change in the physical location of the laboratory, They need to provide us with any change in their record keeping policies, their conflict of interest policies, and personnel policies, and a number of other things. We also can request additional documentation or information from these labs. And finally, as I noted earlier, we have the ability to do EAC on-site reviews of the labs. In here there are really two types of reviews that we've outlined. One is essentially a policy, procedures and practices review. This type of review would require EAC personnel to enter a voting system test lab facility to examine documentation and to meet with voting system test lab personnel to confirm that the lab's policies, procedures and practices do in fact in reality meet the requirements of our

Laboratory Accreditation Program. This would occur once every two years, and as you might know from the presentation that you had from the NVLAP folks they also, after the initial two-year period, they do a review of their labs every other year. So our goal is essentially one year to have a NVLAP representative go in and then that intervening year an EAC representative would be able to go in and look at the facilities. And this, I should say, is going to be by far the most common type of on-site review that the EAC would conduct.

The second type of on-site review would be a testing observation and technical assessment review, and this essentially would require that the EAC have a contracted laboratory assessor to be able to enter the voting system test lab facility in order to assess the lab's technical procedures, policies, management, personnel and to verify compliance with acceptable lab practices and standards. Additionally, we have the ability that the EAC assessor would be able to observe test lab employees during the testing of voting systems to, again, ensure that the test lab's practices match their technical policies. And I should say this is only included as an additional tool to be able to ensure compliance. The primary means for assuring technical compliance is, and will always be, the NVLAP assessment that is required to be done prior to the labs applying to the EAC.

The next chapter in the document discusses the revocation of an EAC accreditation. Essentially the process for revocation would begin with

factual findings made pursuant to the compliance management program that I just spoke of. Each time that an EAC representative would go into a facility, they would write up what we term compliance management reports. And if sufficient deficiencies were found there they could in fact lead to a revocation. Test labs that fail to comply with our program requirements will be provided a notice of the EAC's initial intent to pursue suspension, they would later be provided with the intent to suspend itself, and finally they would be provided with an opportunity to be heard or to cure their noncompliance. A lab that has had its accreditation revoked does have the right to appeal. And, again, all revocations and appeals to that revocation will be voted on -- recommended and voted on by the full Commission. Again, it's important to note, though, that the lab may choose to cure and is able to cure their deficiencies at any time during this process. They do not have to wait until sort of that dreaded revocation stage. They can do it at any time during the process.

The next two Chapters, which are 6 and 7 in the document, essentially mirror some of the things that we've included in the Testing and Certification Program. Chapter 6 discusses requests for interpretation, and it just outlines procedures by which voting system test labs can seek clarification of the voting system standards or our guidelines to us. Again, as in our Certification Program, interpretations are case specific but may be used as precedence to understand and apply the standards. And certainly they'll also be used to educate us in whatever later standards or

changes to that document might come down the road, they could also be included in that document. As we do with our Certification Program, all of these interpretations will be published in the library of interpretations at the EAC's Web site at [www.eac.gov](http://www.eac.gov). Chapter 7 deals with the release of laboratory accreditation program information. Again, as is always, it's our policy to make sure that we have as much information as possible and as practical and consistent with federal law to make that available on our Web site. Again, the chapter also sets out EAC procedures and the responsibilities of the lab's themselves when information -- when they have identified information as protected.

Finally, the document has three appendices. Appendix A is basically a format and outline for an EAC test plan. Appendix B is an outline of the certification test report. And Appendix C just discusses the use of an EAC logo that the labs might want to have after they've received accreditation.

That is in brief an outline of our draft document. Again, we're going to be putting it out for public comments. We expect -- I believe we got 400 or so public comments on the Certification Program Manual and I would expect probably near that many for this one, as well. I'd be happy to answer any questions you have.

**CHAIRWOMAN DAVIDSON:**

All right, thank you very much. Commissioner Hillman, you're the...

**COMMISSIONER HILLMAN:**

First up at bat.

**CHAIRWOMAN DAVIDSON:**

Uh-huh, your turn to be first.

**COMMISSIONER HILLMAN:**

Okay, thank you. Just a couple of questions for you. On the section Chapter 2 about notice of lawsuits, can we also or should we also be asking for labs to notify us if they have filed a lawsuit against an entity, like a voting system manufacturer or, you know, some other entity that -- or NIST? Or -- I don't know who they might be filing a lawsuit against.

**MR. HANCOCK:**

Well, that's certainly -- yes, that certainly might be interesting for us to have and very valuable, in fact, depending on what type and against, you know, who the suit might be.

**COMMISSIONER HILLMAN:**

Yes, I don't know the conditions. Half a question to the General Counsel that we might have to put on that, but I think it would behoove EAC to know not only of suits or complaints filed against the lab but vice-versa if the lab is in fact taking action or filing notice against somebody.

**MR. HANCOCK:**

We can work with Counsel to get that answer.

**COMMISSIONER HILLMAN:**

Then my other question goes to Chapter 5, the revocation of accreditation. I think I am correct that EAC cannot or at least does not levy

any fines, any monetary penalties at all if a lab is half a step out of compliance. I mean there's no...

**MR. HANCOCK:**

Correct.

**COMMISSIONER HILLMAN:**

Right?

**MR. HANCOCK:**

Yes.

**COMMISSIONER HILLMAN:**

Is that because we can't or we just haven't?

**COUNSEL GILMOUR:**

We have no authority to issue a fine.

**COMMISSIONER HILLMAN:**

We don't have the authority to do that? Okay, thank you.

**CHAIRWOMAN DAVIDSON:**

Commissioner Hunter?

**COMMISSIONER HUNTER:**

I don't have any questions at this time, thank you.

**CHAIRWOMAN DAVIDSON:**

No questions?

**COMMISSIONER HUNTER:**

But thank you for all of your hard work and your presentation.

**CHAIRWOMAN DAVIDSON:**

Do you want me to come back to you?

**COMMISSIONER HUNTER:**

Maybe.

**CHAIRWOMAN DAVIDSON:**

Okay. Commissioner Rodriguez?

**COMMISSIONER RODRIGUEZ:**

Thank you. Thank you, Mr. Hancock for your presentation. Thank you, Madam Chair. You said that the EAC will publish the Manual in the Federal Register for a 30-day public comment period, but you said that's not required?

**MR. HANCOCK:**

Correct. The program that we have established, as for the Certification Program, there are no requirements under the, Counselor help me out, under the Rules and Procedures -- Administrative Rules and Procedures Act. But, again, we think it's extremely important for the transparency aspect of the program to actually do this.

**COMMISSIONER RODRIGUEZ:**

And Mr. Hancock was that your recommendation to the Commission something that the staff developed? Or was that -- I wasn't here when a lot of this stuff was done, so will you just tell me how that evolved?

**MR. HANCOCK:**

Right. I think it was our initial recommendation to the Commission when we were doing the Certification Program Manual. And it seemed to work very well then, so we thought we'd pursue that at this time as well.

**COMMISSIONER RODRIGUEZ:**

Okay. And then you describe an EAC policy regarding the release -- or no, no. It's EAC's policy to make as much information available as practical, consistent with federal law. Is that again a Commission -- a policy adopted by the Commission? Or is that one you had direction on? Or is that one that you guys recommended?

**MR. HANCOCK:**

Yes, again when we were developing the Certification Program Manual, and we certainly worked very carefully with Counsel, and essentially the only information that is very obviously protected would be that that would be covered under the Trade Secrets Act. And I think there are very specific determinations as to what information would fall under those categories. And outside of those we see no need to protect any information, quite frankly.

**COMMISSIONER RODRIGUEZ:**

Well I think these two steps that the Commission is taking, and your group in particular, go a long way to helping us as a Commission be more transparent. And I very much commend those steps and your efforts.

**MR. HANCOCK:**

Thank you.

**COUNSEL GILMOUR:**

For clarification, the specific language is actually from our Testing and Certification Program Manual that was adopted by the Commission.

**COMMISSIONER RODRIGUEZ:**

Okay.

**COUNSEL GILMOUR:**

So that would be the Commission policy in that Manual.

**COMMISSIONER RODRIGUEZ:**

So that's how...

**COUNSEL GILMOUR:**

It's actually just repeated in this Manual so people are fully aware of the requirements.

**COMMISSIONER RODRIGUEZ:**

Very good, thank you.

**CHAIRWOMAN DAVIDSON:**

Brian, my two that I have on my mind is I also know that NVLAP through, you know, the National Institute of Standards and Technology also has a manual on certification of laboratories or their accreditation -- recommendation of accreditation. And I'm aware that the staff has worked with them on updating that manual. My question is does it kind of coincide or make sure that we don't have anything that conflicts with the two manuals?

**MR. HANCOCK:**

Yes, Madam Chair, that's correct. You're right, they in fact have two documents that govern -- well more than two, but two very specific documents that govern their voting system test lab accreditation program. The initial document was published well before we had started work on this document. In fact, it was published right around the time that HAVA was passed and the EAC was just getting formed, so there were some inconsistencies in that document and NIST in fact themselves saw the need to revamp that document to make some corrections. So they're very careful to work with us, and so their manuals and our draft manual do match exactly at this point. And my understanding is that their manual will be, at least their 15022 manual will be going out for public comment shortly. They're a bigger agency, so it takes a little longer to get through their review process, the Department of Commerce. But it will be going out for public comment.

**CHAIRWOMAN DAVIDSON:**

After that is done is there any intent that we would either link to that manual so people would be aware of their process prior, because it is part of really the process? Or would we put that manual up on our Web site also so that people would be aware?

**MR. HANCOCK:**

We haven't actually discussed that, but it's certainly not a bad idea at least to link to it, you know. And perhaps they would even want to link to

ours from their specific voting page because the manuals are so important and dovetail so closely.

**CHAIRWOMAN DAVIDSON:**

Okay. The other question I have is you talked about when we would go into a laboratory and do our review and when NVLAP goes back. Also I just wanted to make it clear to the public that it is also -- NVLAP also has to go in whenever there is a new iteration of the Voting System Guidelines. Is that correct?

**MR. HANCOCK:**

Yes, that's correct Madam Chair. One other thing that we should note is we don't charge anything for our facility review. So we're free, NVLAP is not.

**CHAIRWOMAN DAVIDSON:**

But there is a charge by NVLAP?

**MR. HANCOCK:**

Yes, ma'am.

**CHAIRWOMAN DAVIDSON:**

Okay. All right, I appreciate it. Would you like to have anything, Commissioner Hunter?

**COMMISSIONER HUNTER:**

No.

**CHAIRWOMAN DAVIDSON:**

Okay, no questions then -- additional questions. So I will turn to Tom Wilkey. Do you have any questions for Mr. Hancock?

**EXECUTIVE DIRECTOR WILKEY:**

Just one fast question, other than the fact that is another document that I think that the Commission can be very proud of. It's typical of the kind of work that's come out of your division and you've done a good job on this.

I am assuming in Chapter 4 when you talk about assessment review that that would also include whether the assessor feels that there is sufficient number of personnel to keep up with the volume that they have, because that's always appeared to be a problem in the past.

**MR. HANCOCK:**

Absolutely, that's certainly something we would look at. And to an extent that is actually something that NVLAP looks at during their limited management review as well. So, yes, we're both going to hit on that. Yes.

**EXECUTIVE DIRECTOR WILKEY:**

Great, thanks. Thank you, Madam Chair.

**CHAIRWOMAN DAVIDSON:**

Counsel Galvin Gilmour, do you have any questions?

**COUNSEL GILMOUR:**

I don't have any specific questions since I'm familiar with the document. But I would like to point out and encourage the public and the interest groups and manufacturers and vendors and everyone to provide

comments. The main reason we initially decided to put these things out for a public comment process was because we found it very useful. We're creating a program that's not existing before, so getting -- you know, not wanting to create unintended consequences, not wanting to do things that wouldn't have a benefit in the long run we decided to ask lots of people what their opinion was. So really it was a practical concern as to why we did this. So we do encourage people to provide comments. And I think that when folks read it it really is a document that they'll find significant differences over what's been there previously, although there's not much documentation necessarily with what previously occurred, but the bottom line is you'll find that the conflict of interest provisions, the laboratory independence provisions are very strong, oftentimes modeled off a federal government requirements. And I think they'll be well received and I hope people do provide comments on that.

**MR. HANCOCK:**

And, Counselor, let me just add to that that I think the important thing you brought up is read the document. I think we've been finding out as we progress with our Certification Program that some of the questions that we get asked by the participants are actually answered in the Manual, and we're finding that they're not reading it very carefully. So we would invite everyone to read both Manuals very carefully, as well as to comment on those Manuals.

**CHAIRWOMAN DAVIDSON:**

Thank you very much. Appreciate it.

**MR. HANCOCK:**

You're welcome.

**CHAIRWOMAN DAVIDSON:**

Next we have our discussion on our missions and goals for the EAC Assistance Commission Strategic Plan. And after many months of drafting and editing the EAC missions and goals, the Commissioners have succeeded in coming up with a document that we think is worth discussing today and with some strategic objectives for the agency and a plan of action going forward. So there's copies that are available if you didn't get copies. So we also have copies for everybody.

But I will open it up for discussion. We have it in front of us. Any discussion on the strategic objectives for the EAC? Okay, Commissioner Rodriguez?

**COMMISSIONER RODRIGUEZ:**

Thank you, Madam Chair. Just one of the goals of this Chair and the Commission over the past year has been to outline our strategic objectives. When I started, we talked about it. And now I'm very pleased that we have come to the point of putting some goals on paper. I think I've heard from a number of staff members that they'd like some more formal direction from the Commission, and I believe it's also required by the OMB. So I think this is a step. I know it's not in final form yet, but I think it's an

important step that we have as Commissioners have taken. And hopefully by the end of the year we can have a final work product.

**CHAIRWOMAN DAVIDSON:**

Thank you.

**COMMISSIONER HILLMAN:**

A question and a comment. I noticed that, and I understand that this document started earlier this year in 2007, but under “Statutory Requirements” there’s a first sentence that says, “Prior to discussing EAC’s strategic plan for 2007-2010.” Are we talking fiscal years or calendar years? I mean we’re almost at the end of 2007, so I’m wondering if we mean to adopt this that we’re going to cover the last few weeks of this year. Or should we be talking about 2008-2010, which is really three years? I mean it’s just a question as to what the effective date of this is and what guidance this would issue.

**CHAIRWOMAN DAVIDSON:**

I think a strategic plan, if I’m correct and I may have to turn to our Counsel, is to be at least three years. And also, if I remember right, there was something that we need to keep in mind for a five-year plan.

**COUNSEL GILMOUR:**

I’m not aware of what specific requirements we’re trying to fulfill with this document here. And I’m not sure exactly what the purpose of the date here is serving, so I have a hard time responding to you at this time on that question. But what’s -- so the question deals with timeframes?

**COMMISSIONER HILLMAN:**

Well, I don't think that there's a required minimum/maximum number of years. I mean OPM, the Office of Personnel Management, and the Office of Management and Budget, issue guidelines and I think whether we establish the strategic plan for three years or five years is at the discretion of the Commission. I'm just a little sensitive to adopting this late in 2007 a plan that addresses 2007 because I don't think we mean this to be retroactive. So one recommendation would be just to change that to say 2008-2010. That's still a three-year period because it's eight, nine and ten.

**CHAIRWOMAN DAVIDSON:**

Sure.

**COMMISSIONER HILLMAN:**

The other comment -- question I would have is we received I think the last draft I saw of this before today came out in late August, early September, and I'm just wondering if -- what the differences are or changes between the draft that was floated at that time and the one that's before us today.

**CHAIRWOMAN DAVIDSON:**

I think very little. I think that Commissioner Rodriguez you made really one initial change. I'm not sure whether you made any changes.

**COMMISSIONER RODRIGUEZ:**

Thank you, Madam Chair. I removed one goal and that was to do a UO cover [ph] conference since we had already done one.

**COMMISSIONER HILLMAN:**

Okay, thank you. I would hope that -- I mean I certainly agree and I join in saying that, "Hallelujah, we're coming to the end of wordsmything and developing our strategic plan." Certainly the mission statement, the functions, the guiding principles, and the statutory requirements reflect the consensus of the Commission and the input from the staff. I am a little concerned under the strategic objectives. I fully agree with the strategic objectives outlined in bold; increase transparency, maximize impact by focusing on relevant issues, et cetera, maximizing support for election administration improvements. I would hope that the specific tasks/projects bulleted under each of those strategic objectives would be explained as recommendations from the Commissioners to staff and that staff would come back to us hopefully by the beginning of 2008 with their suggested changes to the specifics. I would not want this strategic plan to cause staff to have to reshift focus on any initiative, particularly for 2008. But there are some very specific things in here, which could be good projects, but they may or may not fit within our approved budget for 2008 with the budget submission we've made for 2009 and those kinds of things. So I guess it's sort of a question/comment to the Executive Director does that make sense?

**EXECUTIVE DIRECTOR WILKEY:**

It makes absolute sense. And I think what we were looking for in this document, at least as far as staff was concerned -- staff worked very hard

to do some basic going through a number of issues over a period of time -- and it was felt that the Commissioners should weigh in on their overall strategic objectives as a policy making group. But certainly we will be taking this document and flushing out where we need to go into more specifics, as you've well pointed out, based upon our budget recommendation -- budget that we will have in place for 2008 when we finally get one and what we have submitted for 2009. I also wanted to point out that while we sometimes have our differences of opinion with issues with the Office of Personnel Management and the Office of Management and Budget that we have gotten excellent input from both of those entities. In fact, the Office of Personnel Management we are working with now and they will be working with us as we bring somebody in to help refine this a little bit more. And during our recent budget submission meeting with OMB, and I might add that OMB has been so very helpful at least to me personally and I know to the Commission over a period of time since its inception, and they have offered also to do a cursory review and to work with us and to give us recommendations as we approach the final adoption of this document. So we're very pleased to have that input. But I think you're absolutely right Commissioner, this is the framework and from that framework we will build the house based upon that framework.

**CHAIRWOMAN DAVIDSON:**

Commissioner Rodriguez?

**COMMISSIONER HILLMAN:**

Well, I did want to ask what you thought was a reasonable timeframe that you could come back, because this document will be public and I would think that people will look at this and say, "But the Commission said it was going to do this." So what is a reasonable timeline for you to work with the staff to come back to us so that the specific bullets under the strategic objectives will be accurate?

**EXECUTIVE DIRECTOR WILKEY:**

I would think by the first part of the year probably. I believe our first public meeting in the New Year where we have substantive discussions is in February, and hopefully we can get something to you by then.

**COMMISSIONER HILLMAN:**

Thank you.

**EXECUTIVE DIRECTOR WILKEY:**

Thank you.

**CHAIRWOMAN DAVIDSON:**

Commissioner Rodriguez?

**COMMISSIONER RODRIGUEZ:**

Thank you, Madam Chair. I do think that the staff will take a look at this and say, "Oh, that's what we've been asking them to do for awhile." So I think there's a lot of synergy between what the staff has been advising the Commission as a way to proceed and our recognition that, "Yes, we need to go there." And so I think -- we have so much difficulty in meeting together as a group because of open meetings that this is I think a real

basis for discussion within the open meeting parameters, but I think the staff will be encouraged. I hope.

**CHAIRWOMAN DAVIDSON:**

Commissioner Hunter do you have anything to add?

**COMMISSIONER HUNTER:**

No.

**CHAIRWOMAN DAVIDSON:**

So then the direction that you think -- that is possible that we go ahead and have -- that I ask for a motion for the mission statement, functions, guiding principles, statutory requirements, and the strategic objectives and in that area just take the bullet points and not the other and we have a motion that way? Or do you have something else in mind Commissioner Hillman?

**COMMISSIONER HILLMAN:**

No, I would be comfortable adopting this with the understanding that the specific bullet points under each of the three strategic objectives are recommendations from the Commissioners and that the staff will come back with a finalized list for us to consider and approve no later than our February public meeting, if I heard the Executive Director, and that we would just also change the date from 2007 to 2008.

**CHAIRWOMAN DAVIDSON:**

And that's a motion?

**COMMISSIONER HILLMAN:**

That would be my motion.

**COMMISSIONER RODRIGUEZ:**

Second.

**CHAIRWOMAN DAVIDSON:**

There's a motion and a second to take what you see before us on the strategic objectives -- I'm going to try to put it in the words that Commissioner Hillman did -- taking -- making sure that the bullet points that are there and then the staff look at our suggestions underneath those bullet points, come back with recommendations by February. Also, change the date of it for the requirements of the strategic plan for 2008-2011. Is that close enough that we can call for the motion?

**COMMISSIONER HILLMAN:**

Or it could be 2010. I don't know if -- I mean it could be 2011, but I wasn't suggesting we add another year. Just 2008-2010 since this speaks through 2010.

**CHAIRWOMAN DAVIDSON:**

Okay, 2008-2010. All those in favor of the motion? Or is there any discussion? Should I ask for discussion? Seeing no discussion, I will call for a vote. All those in favor say aye. Opposed?

[The motion carried unanimously.]

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**CHAIRWOMAN DAVIDSON:**

We now have, which is a big “hurray” for us I think, a mission statement and a lot of groundwork done so the staff can then move forward. Thank you everybody. I appreciate the Commissioners’ hard staff and staff’s hard work and I know it’s been frustrating through a lot of time that we have not had this in place.

Okay, moving forward the next thing that we have on our agenda is that we may consider an interim policy for handling state requests to change the National Voter Registration Form. At our last meeting in October we heard testimony from the staff regarding the initial policy on how the EAC will handle states’ requests making changes to the National Voter Registration Form. The staff drafted a document seeing that it wasn’t approved and that others was given out and not approved. I have prepared one that hopefully we can look at. Obviously I emailed it to the Commissioners this morning about an hour before and then it was revised because our Counsel was good enough to clarify it and help us relate and put it into motion. The substance has not changed at all but the clarifications and it’s written far more appropriate for the agency if it is adopted. This is available to the public. If anybody did not get a copy, there is copies out in front or EI will have copies that she will hand out if you’ll just raise your hands.

And basically, as we all know, that it is very important as we move forward with the Presidential election being so near that we do everything possible to give local officials the tools that they need to have fair and

transparent elections. And with elections being right around the corner and every vote must count and every registered person must be able to know what the instructions are for the states to be able to move forward so we don't have any disenfranchisement at all, I think it's important for us to have some type of a policy.

The policy I have taken is listening to all of us, and I appreciate the staff's hard work in coming up with a policy that -- a draft policy and the Commissioners also working so diligently on this. I've come up with one that hopefully people can support. It's not the best, I will admit it, but at least it gets us off of square one where we can move forward. It addresses that state address changes can be made immediately by the Director of Election Administration Support, which was formerly the Programs and Services area of our office. And we have the addresses changes made immediately. Right now we have one that's before us and they have asked for it to be changed for I think approximately a month, but they've asked a couple of times or even maybe more, "When are we going to make our decision?" So obviously they're very anxious to be able to get that information on their form of what address that the form is to be mailed to to make sure -- ensure that they get all the registrations that are mailed to the office.

Second of all, it gives all the information coming -- once it comes in and the Director of Election Administration can make appropriate changes -- or not appropriate changes -- ask for clarification of information that

comes from the states, and all of that is sent to the Executive Director. And once the Executive Director has reviewed the state's request to anything other than the address change, after they have reviewed it and feel like they have enough supporting document to go to the Commissioners, it goes to the Commissioners for a vote. And then we've set up a few procedures on how it is actually to be addressed. Address changes would be done within seven days, business days. And all other changes once all of the information is gathered by the Director of Election Administration Support and forwarded to the Executive Director it would be referred to the Commissioners for their decision. And issuance of the decisions on any case would be made in writing. That just kind of goes through what my request is, and I do submit that for consideration. And I do know this was very late in getting it out to you so -- for discussion first of all. So I'll open it up for discussion. And you can see that we really are not doing anything behind the doors because the Commissioners didn't receive this until this morning very late. Ms. Hunter? Or Commissioner Hunter I should say.

**COMMISSIONER HUNTER:**

Madam Chair, thank you. I appreciate your work on the subject and I think that this does take us a step forward. We all have an interest in making sure the form is as accurate as possible, particularly since the Presidential election is obviously coming up very quickly. So I think that this does help us to move forward, and I will certainly support your proposal.

**CHAIRWOMAN DAVIDSON:**

**Any other discussion? Commissioner Rodriguez?**

**COMMISSIONER RODRIGUEZ:**

**Thank you, Madam Chair. At the last meeting both Commissioner Hillman and I wanted to incorporate some public comment period into the NVRA revision process, and we heard earlier today from Mr. Hancock about our Testing and Certification Programs and how without the federal government requiring them to seek public input that the Commission has made that determination that that's a good policy. And I unfortunately dropped the ball. Last month I proposed that we -- it was kind of a simple thing -- any changes to the Federal Form follow the notice, comment and hearing requirements of the Administrative Procedures and Sunshine Act. And I heard from our General Counsel, not Mr. Gilmour, but from our General Counsel who is on leave and she wrote that she needed to explain that Administrative Procedures Act to me. So maybe I shouldn't have included that language about the Administrative Procedures Act. Maybe I just should have said that any changes to the Federal Form have a public comment period instead of referring to the APA. But I wonder why we as a Commission are reluctant to include that type of a requirement in changes that we make to the NVRA. And I'm interested in hearing from all of the Commissioners on that question.**

**CHAIRWOMAN DAVIDSON:**

Before I take that, I do know that our delegation from Mexico has to leave very soon. They have a one o'clock departure time. So we do appreciate you coming and spending this much time with us and we hope that your other travels through the United States are, well as I would say, as beneficial as what I think that you found our meeting as. But I hope that you've enjoyed your time with us. And do come back. You're always welcome.

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[Applause]

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**CHAIRWOMAN DAVIDSON:**

Okay, I'm sorry. Commissioner Hunter you had your hand up for a response?

**COMMISSIONER HUNTER:**

Madam Chair, thank you. I don't think anybody believes that we shouldn't put things before public comment when appropriate or when required certainly. However, I think there are circumstances that the EAC needs to act expeditiously to make sure that the Federal Form is as accurate as possible and to do so as quickly as possible. A member of our staff, Edgardo Cortes, our Election Research Specialist, has given us a memo with four requests that states have submitted to us for changes to the state instruction portion of the Federal Form. I'll note, I believe this is correct, that these are just the ones that we're aware of. I believe Mr.

Cortes told us in his last appearance that we have not gone out and solicited these changes. So my point is there are probably more. I don't know that for sure, but my guess is that there are. So we know of at least four states who have written in and said, "Please change our state instructions." And one example is that the State of New Jersey has changed its voter registration deadline. And it used to be 29 days before the election and now it's 21 days before the election. And while I always welcome input from all kinds of people, I don't know -- I mean I can't think of a reason that we would need to have any kind of public comment on New Jersey changing its state registration deadline. And so I think that there are circumstances that require us to move expeditiously in amending the state instructions portion of the form to me falls very neatly into that box. I've always said that any changes to the first part of the form, which is, you know, not the state instructions, the other portions of the form, should be done through the regulatory process. And as a side note the FEC, with one exception when the Help America Vote Act was passed, did put everything through the regulatory process. All of the changes to the first part of the Federal Form were done through the regulatory process except in one circumstance. However, they did have a policy that we have, Edgardo Cortes was able to find it for us, that the Commission delegated the authority to the staff members to make any and all changes to state law so that the state law is properly reflected in the state instructions. So the FEC didn't find the need to run it through a public comment process. And,

again, I would never argue that public comments aren't useful in most circumstances. I just don't think this circumstance is one that lends itself to providing the public with the most up-to-date information. Thank you.

**CHAIRWOMAN DAVIDSON:**

Commissioner Rodriguez?

**COMMISSIONER RODRIGUEZ:**

Thank you, Madam Chair. And if there's a public comment provision in your proposal I apologize that I missed it, but I didn't see one.

**COMMISSIONER HILLMAN:**

No, there's no...

**COMMISSIONER RODRIGUEZ:**

Of course I only had an hour or so to review it...

**CHAIRWOMAN DAVIDSON:**

Yes.

**COMMISSIONER RODRIGUEZ:**

...but I didn't see one.

**CHAIRWOMAN DAVIDSON:**

There is not one.

**COMMISSIONER HILLMAN:**

Okay.

**CHAIRWOMAN DAVIDSON:**

There is not one.

**COMMISSIONER HILLMAN:**

I have a question for clarification and then I have a comment. What is the status of our efforts to transfer the regs from the FEC to EAC?

**COUNSEL GILMOUR:**

My understanding is we're presently in the request for public comment process that was initiated as a result of the last meeting. I think it was the last meeting.

**COMMISSIONER RODRIGUEZ:**

September.

**COUNSEL GILMOUR:**

It was the September meeting, which essentially is receiving public comments on the transfer versus new rulemaking question.

**COMMISSIONER HILLMAN:**

And so do we know when that comment period ends?

**COUNSEL GILMOUR:**

I think Edgardo could probably give us the date on the public comment period. It was a 30-day period.

**CHAIRWOMAN DAVIDSON:**

Edgardo, do you -- you're next up here anyway, so if you want to come up.

**COMMISSIONER HILLMAN:**

What I'm trying to appreciate is the timeframe. Where are we today from when we would anticipate starting a process?

**MR. CORTES:**

The public comment is over on December 3<sup>rd</sup>, on Monday, December 3<sup>rd</sup>.

**COMMISSIONER HILLMAN:**

Okay.

**MR. CORTES:**

So that -- at that point is when we would provide any comments to the Commissioners as they come in and the Commissioners would then have to make a decision whether to proceed with the transfer and then after doing the transfer begin to amend those rules, or whether or not the EAC would just begin a full rulemaking process from scratch.

**COMMISSIONER HILLMAN:**

Okay.

**CHAIRWOMAN DAVIDSON:**

Can you tell us at this time how many comments that we have received?

**MR. CORTES:**

We've only received one comment so far. It's not been a -- it was not germane to the question that was asked. So...

**COMMISSIONER HILLMAN:**

Okay. Commissioner Rodriguez I actually thought you were going somewhere else with the public comment, and that is to say that if we were making this kind of a decision under the rulemaking process we would put it out for public comment. So I really thought you were going to suggest

that this policy itself be put out in some fashion for public comment before we voted on it because the thing that concerns me is I absolutely agree that we, EAC, don't want to be viewed as causing any voter using the National Voter Registration Form to not be able to timely submit their form to the proper place. And so that's why I was advocating that the change of address be done so that at least state officials could receive the form. And it is my understanding that no state outright rejects a form, at least they're not supposed to, without contacting the voter to say, "We need this additional information from you." But if the voter doesn't have the right address then the state may never receive the form, and we've got one of those pending now. Everything else would be in the scope of policy and we wouldn't be doing it state-by-state, case-by-case. I mean I never envisioned that EAC was going to consider every request for a change to the form case-by-case but rather we would be doing it in the context of policy. And so while I appreciate, and I'm going to guess it's General Counsel's advice, that we have a responsibility, an obligation is the word, to act on these requests even if we haven't yet promulgated regulations. Because we are so close to doing our promulgation period I would wonder that we shouldn't wait on the non-change of address things, or in the interim put this out for public comment because I really would like to know from others -- election officials and others as to what it means that EAC would just take case-by-case-by case. Once we say "yes" to this state, then we're going to say "yes" to every other state and we will be doing it

without an overall policy but rather on a case-by-case basis. So that's my hesitation right now.

**COUNSEL GILMOUR:**

And certainly the context of the comment is, yes, we should have regulations. Absolutely.

**COMMISSIONER HILLMAN:**

Uh-huh.

**COUNSEL GILMOUR:**

And that has been the advice of Counsel, and that context of course is in the idea that we do and we don't, we still have certain requirements under the NVRA to promulgate a form. And I believe that also falls along with the advice that Counsel has given essentially to make sure that we have a standard. If we are in a position where we must do case-by-case, which potentially we may be in now, your issue aside, that we do have some sort of standard by which to judge it so that people are being treated -- states are being treated the same each and every time and that we can identify the issues that are being discussed and they're being discussed consistently. So it's a twofold recommendation.

**COMMISSIONER HILLMAN:**

And the standards are in here? No. The standards -- this is the one before us for consideration today. There are no standards in this.

**COUNSEL GILMOUR:**

This is the one that's presented...

**COMMISSIONER HILLMAN:**

Today.

**COUNSEL GILMOUR:**

I haven't had a chance to substantively review it, but I do not...

**COMMISSIONER HILLMAN:**

No, there are no standards here.

**COUNSEL GILMOUR:**

...understand that there are.

**COMMISSIONER RODRIGUEZ:**

There is no standards.

**COMMISSIONER HILLMAN:**

No. So we would be making decisions based on what standards?

What are the standards that we would be considering a case-by-case decision against?

**COUNSEL GILMOUR:**

Again I've recommended that you do have standards.

**CHAIRWOMAN DAVIDSON:**

In October.

**COMMISSIONER HILLMAN:**

You recommend that we have them?

**COUNSEL GILMOUR:**

Correct.

**COMMISSIONER HILLMAN:**

You're not saying that we have them, you're recommending that we develop them?

**COUNSEL GILMOUR:**

Well, the staff did have a recommendation for standards.

**COMMISSIONER HILLMAN:**

Right, I got you. Okay.

**COUNSEL GILMOUR:**

While those standards obviously can be discussed...

**COMMISSIONER HILLMAN:**

I'm with you.

**COUNSEL GILMOUR:**

...that there be some standards.

**COMMISSIONER HILLMAN:**

I'm with you, okay.

**CHAIRWOMAN DAVIDSON:**

And as I said, I didn't view this as being the very best. I just felt like we needed to be able to move forward so that we have something. This can be improved upon. This is an initial procedure and policy so that we can get started and at least the states know that if they give us all the documentation it will be before the Commissioners and they will be given the decision, you know, as soon as they had all of the information that they felt they needed. The other thing is - is that staff could go ahead and make

any address changes immediately so that it would be available and out there and so the states would have those address changes.

**COMMISSIONER HILLMAN:**

You know I think in conclusion if we don't really have clear -- if we don't have standards and regulations under which to make changes -- I would be willing to stick my neck out on change of address changes because that's just, you know, that's about as basic as you get. If an address is changed, an address is changed. But to open the door for other kinds of things without more definition...

**CHAIRWOMAN DAVIDSON:**

I guess where I come to differ is we're at a point where we're taking a real chance of disenfranchising voters at this point. The one that you see that we got before you where not only with the address change but in New Jersey changing their deadlines, if their form says 29 days and their people are out registering people, they're going to think the cutoff date is 29 days and they won't be sending those in possibly up to the 21 days before the election. So those that could be registered may not even send in their registration forms and so we're disenfranchising voters. And when you go through what's being asked they're pretty simple, and definitely we are going to -- I mean I think it would be pretty embarrassing for this organization to be sued by a voter that didn't have correct information who we've got request in by states.

**COMMISSIONER HILLMAN:**

I'm not so sure that Rhode Island -- I wouldn't necessarily consider Rhode Island's requests simple. And for me that opens the door. I'm not afraid to adopt a policy. There are some things -- you're right. If the registration deadline has changed -- I can think of a situation in which I'd want to question if the registration deadline was moved the other way, you know, as to whether or not -- I would need to know if somebody changed their registration deadline from 25 to 45 days in advance as to whether or not that somehow was in violation of the spirit or intent of the National Voter Registration Act.

**CHAIRWOMAN DAVIDSON:**

And that is...

**COMMISSIONER HILLMAN:**

So I'm not sure that, you know, in the absence of a policy, you know, that we're taking these things case-by-case-by-case. I appreciate the point. I appreciate the point, but I also don't want to be a position where we're doing the flip side of that, which is making decisions outside of a process with standards and policies.

**CHAIRWOMAN DAVIDSON:**

Well and federal law gives us the guidance there that it can't be anything -- the 30 days is the maximum timeframe. So if they wanted 45 days, they're asking for something that's beyond the federal law. And clearly by law we have that guidance that is before us. So I just think that, yes, we may not have enough information on a case-by-case basis, but in

the cases we have before us we do have information. In the interim here I mean that doesn't stop us from voting on -- and saying we don't have enough information from a state or requesting more information. That is definitely in there. So that's -- Commissioner Rodriguez?

**COMMISSIONER RODRIGUEZ:**

Thank you, Madam Chair. Well I think Mr. Cortes has not yet presented the requested changes, but if we had adopted some version of the staff's recommendations they would have been classified as -- in one of three ways; a voter eligibility requirement, an administrative matter, and a procedural matter. And that would have been the standards by which they are then referred to the Commission for a decision. So there would have been a means to adopt the ones that Commissioner Hunter characterized as "simple." I'll just make that point for the record.

**CHAIRWOMAN DAVIDSON:**

Any other discussion?

**COMMISSIONER RODRIGUEZ:**

I think we should hear Edgardo.

**CHAIRWOMAN DAVIDSON:**

Edgardo, the discussion on this -- I think if we have a motion, if it fails then, you know, obviously we move on with Edgardo. If this passes, it does change one and we wouldn't be voting on it. It would change the address where the staff could do that immediately. So that would be the only thing. Commissioner Rodriguez?

**COMMISSIONER RODRIGUEZ:**

I'm going to say this in public, but the one request that we would be able to deal with is from Colorado. And I just -- I don't want to consider as a voter -- I'm a Colorado voter -- a decision that would only benefit my state absent a policy for dealing with the others.

**CHAIRWOMAN DAVIDSON:**

Anything else?

**COMMISSIONER HILLMAN:**

If I understand you correctly, you're concerned about -- you're saying the change of address request was from Colorado. But if we had a policy on change of addresses and we weren't taking it on a case-by-case basis, then we wouldn't have that issue.

**COMMISSIONER RODRIGUEZ:**

But if we adopt this one that would be the only one that we would be...

**COMMISSIONER HILLMAN:**

No, but I'm saying is that if we adopt a policy on change of address then it wouldn't matter which change of address is before us. We're just saying changes of address would go through and it wouldn't...

**COMMISSIONER RODRIGUEZ:**

I cannot separate your question, I'm sorry. I think we need a policy, I'm sorry. It appears that I'm reluctant to adopt any policy. I am prepared to consider the staff policy with a public comment clause, but if the...

**COMMISSIONER HILLMAN:**

I'm sorry. I have a 1:15 conference call, so I just wanted to let those folks know I'm going to be late on my conference call. I'm sorry.

**COMMISSIONER RODRIGUEZ:**

If the effect of my vote state would be only to benefit or to accommodate the State of Colorado, I would have a problem with that.

**CHAIRWOMAN DAVIDSON:**

Okay, with that then I think that we will move on. And my plan is take each one of them separately, we'll vote on each one of these that is before us so that at least we do have the states notified of what the decision is on each and every one...

**COMMISSIONER HILLMAN:**

Madam Chair, I had absolutely no notice we were going to vote on state requests before us. I thought we were asked to consider the policy you had put before us, not to vote on the pending requests. I had no notice of that.

**CHAIRWOMAN DAVIDSON:**

I think it's in our -- when we even put it out for...

**COMMISSIONER HILLMAN:**

I'm saying as a Commissioner, in my briefing book I did not know that what was going to be presented before us today for a vote were the individual requests from the states; that we were going to vote "yes" or "no" without any additional information other than what I saw in the memo

from Edgardo Cortes. Now if there was information that went beyond this little two-page memo, I have not seen it. But I certainly am not prepared to sit here and vote outside, with no policy, no procedure, no establishment to just vote “yes” or “no” on these requests.

**COMMISSIONER HUNTER:**

A point of information. I believe that it was -- actually I know that it was included in the Federal Register notice that we would consider these. And then also I believe it's included in the agenda under the second to the last bullet, “Consideration of State Requests.” I will admit that this area of the NVRA has been very confusing at the EAC, so it's understandable that - - but my interpretation has always been that we would consider the outstanding requests from states even if we're not able to come up with a policy that can be passed.

**COMMISSIONER HILLMAN:**

Right. And I have -- there has been no memo that said -- I look at the agenda and it says that we may consider something, and then it says “Consideration of State Requests” but it doesn't say what those state requests were. And I don't believe there was any memo that said to the Commissioners, “You are going to be asked to vote on these requests and here is the supporting documentation.” So there's absolutely no procedure through which we're doing this other than, “Case-by-case these requests are here. Vote “yes” or vote “no.” And I just don't think that's a responsible way for the Commission to proceed. I thought what we were

considering was an internal procedure to handle the pending requests and that the pending requests were provided to us for our information.

**CHAIRWOMAN DAVIDSON:**

We have -- I asked Edgardo to put out a memo the 9<sup>th</sup> and as I also -- it is -- I don't have it in front of me, but I do believe it was also in the notice for the Register that we put out in the Federal Registration.

**COMMISSIONER HILLMAN:**

But it does not say that the Commissioners were going to be asked to take action on this today. All it says there are currently four requests. This memo details those requests. That's all it says.

**CHAIRWOMAN DAVIDSON:**

Well, I will -- to simply that so that you can consider it, then we'll call -- you'll have a 48-hour period. I'll call for it to be addressed in a tally vote and you can vote it at a tally vote rather than in a public meeting.

Is there anything else before the Commissioners today?

**COMMISSIONER RODRIGUEZ:**

Madam Chair, can we take a five-minute break?

**CHAIRWOMAN DAVIDSON:**

I'm sorry?

**COMMISSIONER RODRIGUEZ:**

Can we take a break for five minutes so that you can...

**CHAIRWOMAN DAVIDSON:**

**We can take a break. We'll have a five-minute break and we'll be right back.**

**\*\*\***

**[The Commission recessed at 1:18 p.m. and returned to open session at 1:22 p.m.]**

**\*\*\***

**CHAIRWOMAN DAVIDSON:**

**I'll call the meeting back to order. I just want to make -- clarify that in our Sunshine Act notice that it reads, "Agenda: Commissioners will discuss and consider adopting a strategic plan. Commissioners may consider an interim policy for handling the states' requests to state specific instructions to the National Voter Registration Form. Commissioners will consider individual state requests to change state specific instructions to form. Commissioners will receive the following presentations," and then it just goes on to the things that we have reviewed today.**

**COMMISSIONER HILLMAN:**

**Madam Chair, I just have to say that this is the very first time that I've had to read the Sunshine Act notice to know what we were going to be expected to vote on. There was nothing else that came to me that told me that this was an item for action. So I just want to be on the record for that.**

**CHAIRWOMAN DAVIDSON:**

**Any other discussion? Edgardo, I'll have you go through the four and then at that point I'll ask for a motion for adjournment.**

**MR. CORTES:**

Okay. And this memo is -- there are copies of it in the back for members of the public. Now this was requested at the end of last week, but essentially there are four states that have officially requested changes to their state specific instructions on the Federal Form. They're listed here in alphabetical order, and basically the memo gives what the current language is in the form and then the language that the state has requested to be changed.

The first one is Arizona, which has requested the addition of a proof of citizenship requirement under the I.D. number section. The second state is Colorado, which has requested a change in the mailing address for where to submit the form. New Jersey has requested a change in the information regarding their voter registration deadline. The form currently has 29 days. The state deadline is currently 21 days before the election. Then the final one is Rhode Island which deals with their -- the language under their voter eligibility requirements. And previously Rhode Island in order to be eligible to vote you have to have completed any sentence due to a felony conviction, and that included probation or parole. They have since changed that and now the only prohibition when it comes to being eligible to vote is if you are currently incarcerated. It allows those on probation or parole to now be eligible to vote.

So those are the four changes in the specific language. The exact language that the states have requested is detailed in this memo.

**CHAIRWOMAN DAVIDSON:**

Okay. Any questions for Edgardo from the Commissioners? Thank you very much, I appreciate it. Edgardo has been very helpful and I appreciate your hard work in this area.

Is there any other business to come before the Commission? Yes, Commissioner Rodriguez?

**COMMISSIONER RODRIGUEZ:**

Thank you, Madam Chair. At my first meeting as an EAC Commissioner I made a statement, and I posted it on the EAC Web site, about my strong desire that the EAC not use the tally vote procedure for important public policy decisions. For routine administrative matters it seems to me to make a lot of sense, or if there's no possibility of meeting it makes a lot of sense. And the Chair has just indicated that she's going to post these state changes -- move these state changes via a tally vote. And I again reiterate my strong desire that the Commission -- I believe this is an important decision, especially since it's being made absent a Commission policy. And I want to register my strong objection that this matter be handled in a tally vote. If we need to call an emergency meeting so that the Commissioners have enough time to consider that, I think we should go in that direction instead of a tally vote. And, again, I believe tally votes should only be used for the most routine and administrative of decisions. Thank you.

**CHAIRWOMAN DAVIDSON:**

Any other comment? Taking in consideration that we can't do a Commissioners' meeting by telephone, and I believe we have researched that in the past. Is that correct that we can't have an open meeting by phone?

**COUNSEL GILMOUR:**

I have not personally researched that. I certainly can.

**CHAIRWOMAN DAVIDSON:**

Speak to it?

**COUNSEL GILMOUR:**

No, I can't speak to that right now. I have not researched it.

**CHAIRWOMAN DAVIDSON:**

I will research that before, because I would be calling an emergency meeting right away, and with Commissioners' schedules being very tight with travel that is upcoming and meetings that's upcoming, I can't see waiting to make these decisions until in December when we have the meeting. And so that's one of my concerns. But I will research that before I do take a tally vote. And so I'll ask staff to prepare an answer there so that we can see that right away. You might contact Julie because I think she has done some research on that in the past.

Any other business before the Commission?

**COMMISSIONER HILLMAN:**

Madam Chair I just wanted to clarify, I think what our General Counsel had advised us in the past is that EAC didn't have a policy about doing -- here we go with the policy thing again -- about doing meetings electronically or through the virtual and that the regs permit that, as we could do with other of our advisory boards, but we'd have to have a policy that says that the meetings are permitted that way.

**CHAIRWOMAN DAVIDSON:**

I just see that every day that we're holding up and making decisions on these that we are really taking a chance at disenfranchising voters. So that's a big concern to me. And I -- so I will move forward as I get information. Thank you.

Anything else?

**COMMISSIONER HUNTER:**

Move to adjourn.

**CHAIRWOMAN DAVIDSON:**

Second?

**COMMISSIONER RODRIGUEZ:**

Second.

**CHAIRWOMAN DAVIDSON:**

All those in favor say aye.

[The motion carried unanimously.]

**CHAIRWOMAN DAVIDSON:**

All right, the meeting is adjourned. Thank you all for coming.

Appreciate it.