U.S. ELECTION ASSISTANCE COMMISSION
VOTING FRAUD-VOTER INTIMIDATION MEETING

Taken at the offices of the U.S. EAC
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Start time: 10:00 o'clock, a.m.

Taken by: Jackie Smith, court reporter

U.S. ELECTION ASSISTANCE COMMISSION:
Tom Wilkey, Director
Juliet Hodgkins, Legal Counsel
Paul DeGregorio, Chairman
Gracia Hillman, Vice-Chairman
Donetta Davidson

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CHAIRMAN DEGREGORIO: I call this meeting to order of the Washington, D.C. St. Louis Cardinals Fan Club. I just had to do that at the beginning because that's my team. I am from St. Louis. We got rained out last night, but we have a couple more chances.

I'm going to call this meeting of the Election Assistance Commission to order. First thing I want to tell all of you, just to remind you to please turn off your cell phones, put them on vibrate during this meeting.

And, also, please know that this proceeding is being recorded by C-Span and by the EAC itself. The EAC will put this on our web site next week for screening. So we ask you to, please, if you have to have conversations with someone, please do it outside. So thank you.

I ask you to please stand for, "The Pledge of Allegiance."

(The Pledge of Allegiance.)

CHAIRMAN DEGREGORIO: I'd like to ask our counselor, Julie Hodgkins, to conduct the roll call, please.

MS. HODGKINS: Thank you, Mr. Chairman.

Members, please respond by saying here or present after I call your name. Paul Degregorio?

CHAIRMAN DEGREGORIO: Present
MS. HODGKINS: Gracia Hillman?

VICE-CHAIR HILLMAN: Here.

MS. HODGKINS: Donetta Davidson.

MS. DAVIDSON: Here.

MS. HODGKINS: Mr. Chairman, there are three members present and a quorum.

CHAIRMAN DEGREGORIO: Thank you, madam counsel.

Our first of business is adoption of the agenda for today's meeting. Members of the Commission, you have the agenda in front of you. Do I have a motion to adopt the agenda.

VICE-CHAIR HILLMAN: Mr. Chairman, I'm not sure if I should do this before or after the adoption, but there has been a last minute change on the panelists.

CHAIRMAN DEGREGORIO: The only change I was made aware of is during the public comment period, that we may or may not have someone who is not listed on the program.

VICE-CHAIR HILLMAN: Thank you. So moved.

MS. DAVIDSON: Second.

CHAIRMAN DEGREGORIO: We have a motion for approval of the agenda as proposed. All I's. The agenda is adopted.

I'd like to welcome all of you. I am Paul DeGregorio, Chairman of the Commission. I'd like to welcome you to our new quarters on the first floor of this building. Many of you have participated upstairs. We've acquired this space up here. Our Inspector General is actually on the other side of that wall, and we have this space that we're going to use for our meeting. It's a little more accommodating than the space we had upstairs. It allows us to have a few more people in this room. So I welcome all of you.
We want to welcome some international guests who are here. Mr. Kessler, who is former parliamentarian from Italy, head of an 18-member delegation from the organization for security and scope operation in Europe. The delegation is here to assess our U.S. elections coming up on November 7th. We appreciate his attendance. And Conrad Weski from Poland, who is also here from the OSCE. Welcome, gentlemen, and welcome others who are here representing various organizations and members of Congress. We appreciate your participation and attendance at this meeting.

Let's now get to old business. Members of the Commission, we have the minutes before you from our meeting, the September 21st meeting in St. Louis. Do I have a motion to approve the minutes as they have been corrected and submitted to you?

COMMISSIONER DAVIDSON: I so move.

VICE-CHAIR HILLMAN: Mr. Chairman, I will second that, but I do pick up one small correction to be made. I missed it in the earlier review. So if I could just note that, and that is on Page 2, at the very top, you asked for a motion to adopt the agenda, and it just says that my motion was approved, and that's it.

If it could just be corrected to say that I moved to adopt the minutes, that would be correct.

CHAIRMAN DEGREGORIO: Okay. So your motion was to move to adopt the minutes.

VICE-CHAIR HILLMAN: My motion, yes.

COMMISSIONER DAVIDSON: I will second the motion.

CHAIRMAN DEGREGORIO: Per VICE-CHAIR HILLMAN's suggested changes, so we have that
20 motion and we have a second. All those in
21 favor, signal by saying I. Opposed, nay?

22 Minutes are adopted as corrected by

1 VICE-CHAIR HILLMAN.
2 Our next order of business is a
3 report by Director Tom Wilkey.
4 DIRECTOR WILKEY: Mr. Chairman, I
5 assume the best news of the days is that the
6 series was rained out last night, which will
7 give the Cardinals most of the day to rest up
8 for the remainder of the series.
9 I am going to give you some
10 highlights of some of the activities that have
11 been taking place here at the EAC. First, we're
12 very pleased with the response that we have got
13 with our four Quick Start Guides, three that
14 were recently printed and sent to some 6,000
15 election offices throughout the country. They
16 are guides that cover ballot preparation, poll
17 worker training, and introducing a new voting
18 system.
19 Today, we're pleased to release the
20 Voters Guide To Election Day, which has a lot of
21 very good information for the voting public, and
22 for those who are interested in everything you

1 need to know about voting. This will be put up
2 on our web by the end of the day or first thing
3 tomorrow.
4 We also have another publication on
5 some best practices on provisional voting, which
6 will also be put up on our web sometime today or
7 tomorrow.
8 We're very pleased with the work of
9 two of our contractors, Connie Schmidt and Burt
10 Williams, who have been working on our
11 management guidelines. These are experts from
12 some very comprehensive guidelines, and we're
pleased that we were able to get them out across
the country.

In the area of research, as you know, Congress has mandated us to do a number of
studies. We have a number that are already
underway, and we have recently awarded contracts
for, first-time voters who register by mail, a
study that is part of the statutory
responsibility, electronic voting study, taking
a look at voters and the transmission of ballots

by various means. Pre absentee ballot posting,
a study, an alternative voting methods study.
Sometime this week, we'll be awarding contracts
for two additional studies, one on voter
guidelines across the country, and the use of
social security numbers in the voter
registration process.

All of these projects, of course,
were mandated by HAVA, and we're pleased that
we're working our way through these.

Certainly, one of the projects that
are underway, in addition to our Design For
Democracy, and our projects that we're working
with is in the area of voter fraud and
intimidation. We recently had a status report
presented to our Board of Advisors and Standards
Board. Following those meetings, we had a day
long meeting of the working group, a very lively
working group meeting, that lasted a full day.
They have presented their findings to our
consultants. We have a report by our two
consultants who did some yeoman's work, very
detailed work, and that staff is currently
reviewing that report to make its
recommendations to the Commission.

As you know, the premise of that work
was twofold. One, to try to define the term
voter fraud and voter intimidation. And then
based upon various research activities that have
happened around the country, to present
recommendations to the Commission on how we
should proceed in a number of areas.

As you know, Mr. Chairman, on a sad
note, the chief person who is responsible for
guiding that project has been ill for a bit and
has not been with us. Hopefully, she'll return,
and I know that all of you and our Commissioners
and staff are hoping and praying for her speedy
recovery and her return.

As you know, our Office of Inspector
General has been very busy. One of our primary
responsibilities is in the area of auditing the
81 billion dollars that was distributed by the
EAC to states. We recently concluded final
appeal in the California audit. We have audits
that we're reviewing for recommendations to the
Commissioners in Georgia, New Jersey, Texas, and
Illinois. And the following states are in the
process of being audited: South Carolina,
Maryland, Pennsylvania, Virginia, and Indiana.
And we should have those reports within the next
month to six weeks.

Certainly, we want to remind those
here present and those who will be viewing this
on the web cast that we hope you will keep up to
date with everything that goes on here at EAC on
our web site, www.eac.gov, and also go on line
to request to be put on our mailing list, since
we do distribute a monthly newsletter every
month. Mr. Chairman, that is the
highlight of activities for this month. If you
have any questions, I will be glad to answer.

CHAIRMAN DEGREGORIO: Members of the
Commission, do you have questions for the
executive director?

VICE-CHAIR HILLMAN: I do. I do have
1 one.  I know that we have been working on the
translation of terms of some of our materials.
And I wondered if you could give us an overview
of where we are with that, whether any of this
will be done before the election.

DIRECTOR WILKEY:  Commissioners, in my quest to
stay within the time frame that I wanted to give
myself, the latitude, I did leave that out, and
I apologize for that.

The EAC is in the process of
translating its web site into Spanish and
updating a list of terms and common election
terminology.  The EAC list of translated
election terms will assist election officials in
the development of linguistically and culturally
appropriate translations.

We also, based upon the very hard
work of our Asian working group, will be looking
at doing a similar type translation for Chinese,
Japanese, Tagalog, and Vietnamese, and Korean,
and we will also be looking at our native
American and Alaska native language to get
similar type glossaries.  So thank you for
reminding me.

VICE-CHAIR HILLMAN:  Well, I am glad
to hear that because I know from day one when
this Commission was established, we had wanted
to be able to do materials in different
languages, feeling that states are required to
do that.  If they are not required, many do, and
it was something that the EAC wanted to do, and
we're pleased to do.

I do have one more question.  I want
to go to the report on the voter fraud and
intimidation.  There's been an awful lot of
discussion about that, a lot of press report.
And so I'm wondering if you can just give us a
highlight as to the kind of inquiries we have
had from the public, and what our response has
been, and how we're handling that.

DIRECTOR WILKEY: Yes.

Unfortunately, there was a bit of confusion over
what was distributed at our May Board of
Advisors and Standards Board meeting. As I

indicated, that was a status report of where our
two consultants were at that time.

Following those two meetings, a lot
transpired. We had, as I indicated, a full day
meeting of our working group, which was a very
bipartisan group, individuals that had a lot of
experience in looking at voter fraud issues,
imintimidation issues, looking very carefully at
this.

And then following that, our two
consultants presented us -- in combination of
looking at the transcripts of those discussions
that were held at the working group meetings,
along with the recommendations and very
comprehensive amount of work that our two
consultants, has taken more time than we
anticipated. As we indicated, we have had some
staff problems in addition to that, but I assure
you that when the final report comes out, we
want to make sure that the research and all of
our research, that when we do it, that it is
complete, and that it is as accurate as possible

before we present it to you, and just as
important, that it is accurate and complete
before it goes for the public.

VICE-CHAIR HILLMAN: If I might just
do a follow-up question to our general counsel,
and that is, I think, where some of the
confusion may have come in is what people
understand is a report. So some people think we
have a report, an EAC report. And we don't have
an EAC report. So I'm not trying to be glib but
11 when is a report a report.
12 MS. HODGKINS: Well, as you know,
13 Commissioners, draft or pre decisional documents
14 are not considered final and releasable under
15 the Freedom of Information Act. And so what
16 we're looking for to release to the public is a
17 document upon which you have made a decision,
18 upon which you are adopting that as policy.
19 And so I think Mr. Wilkey has
20 communicated, but I will reiterate, there is a
21 policy here, drafts prepared for us on our
22 behalf by consultants, experts, or even
23 contractors, those reports are reviewed by our
24 staff, and recommendations are made to you guys
25 for your adoption and deliberation.
26 VICE-CHAIR HILLMAN: So the
27 difference is between the reports that we
28 receive from our staff, from the consultants,
29 from personal services contracts or whoever is
30 doing work for us and then reports that we issue
31 once the Commissioners have arrived at some
32 conclusion?
33 MS. HODGKINS: Right.
34 VICE-CHAIR HILLMAN: Okay,
35 thank you.
36 CHAIRMAN DEGREGORIO: Questions.
37 COMMISSIONER DAVIDSON: No questions.
38 CHAIRMAN DEGREGORIO: Thank you,
39 Mr. Wilkey.
40 We're now in the business
41 portion, new business portion of our agenda, and
42 we have a resolution on National Worker
43 Appreciation Week.
44 Ms. Hillman has something to present.
45 VICE-CHAIR HILLMAN: I would.
46 There's been a lot of talk about what it takes
47 to prepare for on election across the country,
what it takes to actually conduct the election on Election Day. And the unsung heroes in this country really are the people who volunteer to work as election judges, poll workers, election day workers. And we would add to that the people who are election workers every day of their career.

And so as the EAC did two years ago, in 2004, I would like to propose that we adopt a resolution which would be National Election Worker Appreciation Week. And in this resolution, we're giving recognition to the one million workers who will serve in the Federal election on November 7th, recognizing the great diversity in this country, and how that is reflected in the poll workers, and to really recognize these champions of democracy on behalf of the Election Assistance Commission, but also in conjunction with Secretaries of State and local election officials as well.

And so with that, I introduce this resolution, and would move that we would adopt this resolution. If it pasts, perhaps we could sign it during the break, and then staff could make copies of this that could be available to everyone who is here this morning.

So with that, I move adoption of the resolution.

CHAIRMAN DEGREGORIO: Do we have a motion to adopt Resolution 2006.1 regarding National Election Worker Appreciation? Do we have a second?

COMMISSIONER DAVIDSON: Second. And I would like to add the one thing that I think is very important is we need to recognize that we can not do elections without all of these over a million people, and that is what makes our election succeed. And without their help, we would not be able to accomplish this great
21 effort. So I definitely second the motion.
22 CHAIRMAN DEGREGORIO: Motion and

1 second to this resolution.
2 Before I call the question on this
3 motion, I will make my comments also, that I
4 know that the three of us have spent
5 considerable time, from time to time, in poll
6 worker training on Election Day to watch these
7 tremendous Americans who are the backbone of
8 democracy. And I simply echo the comments of
9 our colleagues.
10 I know that the three of us and our
11 staff and many of our stakeholders work very
12 hard to recruit poll workers for this election.
13 We have taken to the air waves, TV waves, to
14 encourage people to serve as poll workers, and
15 we hope that Americans simply recognize the work
16 that they do to serve them on Election Day, many
17 of them working for 15, 16 hours with very
18 little pay to do so.
19 So with that, I would call the
20 question. And let me read the resolution before
21 we vote on this, please.
22 "Resolution 2006-012, National Election

1 Worker Appreciation Week. Whereas November 7,
2 2006, more than one million persons will serve
3 in the process of conducting our federal
4 election, whereas election workers representing
5 every facet of our society and communities
6 provide a tangible link between the public,
7 voting public, and the election process, whereas
8 election workers provide an invaluable function
9 to our country and are one of this country's
10 most valuable resources, whereas election
11 workers volunteer to serve their fellow citizens
12 with distinction and provide an invaluable
13 service to their communities, whereas election
14 workers span the generation gap from high school
students, senior citizens, and mirror the amazing diversity within their community and American society as a whole, whereas, election workers are the backbone of American democracy, and their dedicated service allows our democracy to survive, whereas election workers are American champions of democracy, it is most appropriate to recognize the contribution that election workers make each time that we cast our votes.

Now, therefore, be it resolved that the United States Election Assistance Commission, in concert with the states, counties, and election jurisdictions of the United States, proclaims the week of November 5th through 11, 2006 as National Election Worker Appreciation Week.

And be it further resolved that the Election Assistance Commission extends its appreciation and admiration for the election workers of this country for the vital service that they perform in conducting this country's elections.

We call the question. All those in favor, signify by saying I. Opposed?
This motion has been adopted. This resolution will be signed later and distributed to all of you. Thank you.

Now, we turn to the business of the day regarding our testing and certification program for election equipment. You know, it was four years ago tomorrow that President Bush signed the Help America Vote Act, certainly an important act that affected not just the three of us at this table in our lives, but the lives of every single American.

The Help America Vote Act provided a
8 new federal role in the conducting of elections
9 in America. This program we're going to discuss
10 today is part of that mandate of the Help
11 America Vote Act. The EAC has produced a draft
12 and I show it here. This draft was published in
13 the Federal Register on October 2nd for a 30-day
14 public comment period. It has been made
15 available for review at our EAC web site,
16 www.eac.gov. To date, the EAC has received
17 numerous comments on our draft, and expect to
18 receive more up to when the comment period ends
19 on next Tuesday, October 31st.
20 Adoption of this program has been our
21 top priority for 2006. And the numerous experts
22 have worked very hard to produce the best
23
1 program possible.
2 Before we get to our panelists, I
3 believe it's important to give some history of
4 the process of certifying election equipment in
5 the United States, and how the EAC has now been
6 tasked with this program. The Federal Election
7 Commission adopted the first set of voluntary
8 national selection standards for computer voting
9 systems in January 1990. At that time, no
10 organization existed to certify and test such
11 systems to those standards.
12 The National Association of State
13 Election Directors, also known as NASED, filled
14 this void in 1994 when it formed the nation's
15 first program to test and qualify voting systems
16 to the new federal standards. Nearly 40 states
17 have used the NASED qualification process.
18 In 2002, Congress passed HAVA, which
19 created the Election Assistance Commission.
20 HAVA ushered in National Institute of Standards
21 & Technology, also known as NIST, to partner in
22 implementing and administrating this program.
23
1 In 2004, the EAC began its first year
2 of operation, and our first priority was
3 completing distribution of the 3.1 billion
4 dollars Congress had appropriated for election
5 reform and adopting the voting system guidelines
6 2005. 2005 Voting System Guidelines were
7 adopted by the EAC. And they are a
8 comprehensive set of requirements against which
9 voting systems can be tested to determine if the
10 systems provide all the basic functionality,
11 accessibility, and security capabilities
12 required of these systems. While participation
13 in the certification program is voluntary,
14 adherence to the program's procedure
15 requirements is mandatory for those who choose
16 to participate.
17 It is these guidelines and continued
18 monitoring of the voting systems through the EAC
19 quality monitoring program which insures that
20 the writing systems used in the field are, in
21 fact, the same system the EAC has certified,
22 that voting system manufacturers are finally
23 held accountable to a federal standard.
24 In addition to work on the
25 guidelines, NIST will assist the EAC with the
26 certification program through its national
27 voluntary laboratory accreditation program known
28 as NVLAP. This program will provide
29 recommendations to the EAC regarding laboratory
30 accreditation. After the EAC receives
31 recommendations from and NVLAP, the agency
32 executive director will make the final
33 determination regarding test lab accreditation.
34 Therefore, the EAC and NIST will work together
35 to hold the manufacturers of the equipment and
36 the labs who test the equipment accountable.
37 It is also important to know that
38 this whole process is transparent to the public,
39 that the EAC makes all information available,
40 consistent with federal law. We recognize that
this program will be voluntary. We also note that, like the NASED program, our program is likely to be used by a vast majority of the states.

Today, we're going to hear from several members of the election community who are familiar with these voting systems and the technology used to run them. Our first panel will consist of EAC and NIST staff who will discuss the details of our proposed testing and certification program, including its development and implementation.

On the second panel, we will hear from members of the voting systems manufacturing community, as well as representatives of testing laboratories. After our lunch break, we will hear from our third panel, consisting of three election officials dealing with the new systems. And our final panel which is comprised of a certification specialist and home of a voter advocacy organization.

We will conclude this program with a public comment period with those who contacted the EAC, and will be given three minutes to testify.

I'd like to present our first panel.

Our first speaker is going to be Brian Hancock. Our second, Galvin Gilmour, and our third, Mary Saunders. Brian is the director of our EAC voting testing and certification program. He is the person at the EAC that we will hold accountable for this program. Mr. Hancock has over 20 years of experience in the field of election administration and voting system certification. He'll have responsibility for this program, as I indicated.

Gavin Gilmour, as EAC Deputy General
12 Counsel, provides legal and policy counsel for
13 the full breath of EAC's programs and legal
14 issues. He's also been appointed as the
15 EAC-designated agency ethics official. Gavin
16 was one of the authors of the voting system
17 manual that we're discussing today.
18 
19 Our third will be Mary Saunders,
20 chief of the standards services division and
21 NIST technologies, standards service,
22 As such, she helps administer programs in the

1 laboratory, accrediting candidate coordination
2 and conformity, global standards and
3 information. Ms. Saunders also chairs the inter
4 agency which is charged with coordinating
5 federal agency standards-related activity. She
6 knows a lot about these issues, and currently
7 about the certification of laboratories
8 certification in the country.
9 
10 So without further ado, I'd like to
11 ask Mr. Hancock to give his testimony.
12 
13 MR. HANCOCK: Thank you,
14 Mr. Chairman, Commissioners.
15 
16 By way of background, I would first
17 like to explain for a few moments what we did to
18 produce this manual, how we developed it. Our
19 testing and certification program manual was
20 developed pursuant to the requirements section
21 of the Help America Vote Act. This provides for
22 certification, decertification, recertification
23 of hardware and software.
24 
25 The development of the program has
26 generally followed the International

1 Organization For Standardization Guide 65. This
2 guide talks about the general requirements for
3 bodies' operating systems, and this guide was
4 developed to insure that certification bodies
5 world over do certification of systems in a
consistent, competent, and reliable manner.

As the Chairman noted, the manual was developed in-house with contract assistance from experts in conformity assessment programs. When I talk about conformity assessment programs, it just simply can be thought of as a system established to insure that the product or service meets the requirements that were given to it. The individuals that we use here have over 50 years of combined experience in product development technology planning and testing and certification in both the Government and the private sector.

Let me now take a few moments to highlight some of the new requirements of the testing and certification program which have never before been implemented in the voting system arena. I'll first touch on our quality monitoring program. The EAC quality monitoring program provides an additional layer of quality control by allowing the EAC to review field and voting systems, that is, those systems that voters use on Election Day.

To gather information on voting system anomalies from election officials, and let me quickly define what we mean by anomalies. What we're talking is any irregular or inconsistent action or response that would result in a disruption to the voting process and, finally, to perform reviews and inspections of manufacturer production facilities.

On invitation or with permission of state or local election officials, the EAC may conduct a review of fielded voting systems. This review would be done to insure that the fielded voting system is in the same configuration as that that was certified by the EAC, and that the systems also have the proper EAC mark of certification. For the anomaly
recording portion, the EAC will collect information directly from those that use systems. The EAC's effectiveness of the certification program and manufacturing quality and version control, EAC will conduct contact information from the election official's description of the system at issue date and location of the anomaly, type of election being conducted, detailed description of what went wrong. Credible reports will be distributed to state and local election officials using this voting system, as well as to the voting system manufacturers.

For our manufacturing site visits, facilities that produce certified voting systems will be reviewed periodically to certify that the system being manufactured, shipped, and sold, is the same as that submitted for testing and certification. All registered voting system manufacturers must cooperate with such audits as a condition of program participation.

Let me touch on now, if I could, some of the new requirements of our certification program. Before an EAC decision and certification becomes final, manufacturers must confirm that the final version of the voting system software certified to be delivered with the voting system has been subject to a trust bill. This is a technical process, but it is a process in which the voting system source code is converted to the code that the machines can read in a controlled environment to give confidence that that code is a faithful representation of the source code. Also, they will have to verify that the software has been deposited into an EAC-approved repository and could be verified using manufacturer developed
but EAC-approved tools.

The manufacturer must also provide EAC documentation that all of these requirements have been met. Manufacturers will be prohibited from representing or implying a voting system is certified unless it has received an EAC certificate of conformance for that system.

Statements regarding EAC certification in brochures, on web sites, on displays, and in any advertising or sales literature, must be made only in reference to the specific system that was certified. Any action by the manufacturer to such EAC endorsement of a product or organization is also strictly prohibited. Voting system manuals will also require that manufacturers print specific language warning purchasers that changes or modifications not tested and certified by the EAC will void the EAC certification of that voting system.

Mr. Chairman, if you could let me touch very quickly on some of the future steps we'll be taking as we move forward here. As you noted a bit over the next several weeks, EAC staff will be reviewing all of the comments we receive up to the close of the comment period which is, again, as of 5:00 P.M. October 31, 2006. We will review every single comment that we receive and incorporate those comments that are appropriate. Staff will brief Commissioners to the updates that we make on this document, and prepare for the full EAC vote at our December 7, 2006 public meeting.

We also need to continue our ongoing educational effort or election officials, manufacturers and the public on the requirements of the program. That will be done primarily through the use of the EAC web site, regular
10 meetings, and stakeholders and other appropriate means.

Another important duty that we have and I would like to mention now is the drafting of a lab accreditation manual. Under the HAVA requirements, potential EAC labs must first be accredited by the National Voluntary Accreditation Program, NVLAP, NIST. Of course, Mary's going to go into detail here, but I just want to say that after NIST completes this process, they will forward a list of labs to the EAC. At that point, the EAC will be required to accredit these labs under our program.

While NVLAP will be the technical and quality assurance portion of the process, EAC will be make sure they are certifying certain things. Specifically, we will require no conflicts of interest. EAC will require laboratories, that they maintain and enforce policies which prevent conflicts of interest or appearance of conflicts of interest. Laboratories will insures that the lab, its parent corporation, or any individual staff member concerned with the testing of a voting system, to include the spouse or minor child of such persons, have no vested interest in the outcome of a test process. Prohibited conflicts of interest include the holding of any stock in the entity these products is being tested or a direct competitor of that entity.

Furthermore, no laboratory staff member may be involved in both the development and testing of a voting system or system component, or otherwise providing consultation or other services to a voting system developer that would compromise the independence of the testing of the voting system or system.
The EAC program will also require labs to certify that they do not currently, will not in the future, employ any 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 under either federal or state law.

Mr. Chairman, one other very important related item that I would like to touch on quickly is that over the next year to three years, the EAC and NIST jointly will be undertaking a very important development of a set of standardized test screens. These are groups of individual test cases to make sure that the products meet the VVSG.

This is important because, first of all, these will be developed very openly with input from everyone, the very public process. It will also insure all accredited labs run the same test to term determine if voting systems comply with the applicable standards.

With that, Mr. Chairman, I will now allow Gavin to an add additional testimony here.

MR. GILMOUR: Chairman, Commissioners, I am very excited, and I know Brian is excited to be here right now to talk about this manual. At this point, it represents a lot of work by staff, and we're excited to be at this phase in the process.

Brian has taken a few minutes to discuss some of the more important requirements EAC has written into this manual. What I'd like to talk about, however, is what the EAC itself, as an independent federal agency brings to this process, and many of these things are, in fact, implemented in the manual.

As you know but I think it bears repeating, this programs represents the very
first time Federal Government has been involved in the testing and certifying of voting systems. Since 1990, the Federal Government has been involved in the creating of standards for such testing, but it has not been involved in the testing of those systems to those standards. That was performed by a non-governmental organization, a private organization, the National Association of State Election Directors. For over a decade, they did this on a purely voluntary basis. There were limitations of funding authority and manpower which affected the scope or the organization's program. Now, however, the EAC -- HAVA, has mandated EAC certify voting systems. EAC management of this process will bring federal resources and policies to bear, and this will better serve election officials and voters by increasing effectiveness of the program, and the transparency in the program.

At first, I'd like to talk about a few of the resources that are brought to bear. One of these is a dedicated labor pool or group of dedicated employees. This is the first time there is a group of professional, paid employees whose sole responsibility is to operate a federal certification program. It seems like a minor point but, in fact, this is a new concept. This will be the manpower to make sure that the things that are stated in here are accomplished. And also people will be working towards not only making sure the program runs as it should, but also improving the process year after year.

Along those same lines, we have a written program. For the first time, we have a manual that lays out the rights and responsibilities of program participants. As the chairman noted earlier, we also know that
participation in certification program is voluntary, but for those that choose to participate, adherence to the requirements and procedures in this manual are not voluntary. They are, in fact mandatory.

We can't overlook the importance of this written document. It brings accountability to this process because we have the manpower and a set of rules and modes that everyone agreed to. We can hold individuals accountable to this process. And you see that in this manual throughout it, from the very beginning when the manufacturers register, to decertification of the manufacturer registration, EAC requires program participant to register with EAC before they may submit voting systems for certification. This process allows EAC to predetermine whether manufacturers are, one, capable and, two, willing to participate in the program.

Essentially, at the very outset of an organization's participation in the program, we're bringing accountability into the mix. We're having them agree to understand the concepts in this manual and agree to perform them. The manufacturer registration does a number of things, gathers information we need to know about the organization in order to run the program. It assures they have certain programs any organization would need to have in place, such as a written policy assurance program, written version control programs, and written documentation retention program to certify that they will adhere to the requirements in the manual and report any voting system problems. We outline the process of accountability from the very first.
The other side is decertification. Decertification is to insure that the people are following what we have laid out. Because there are written procedures and a professional staff with the ability to insure they are met. The EAC operates a strong and fair decertification program. This serves as a powerful tool for the EAC to insure that program participants will follow all EAC procedures and policies. With this policy, the EAC has a means to enforce its policy and insures that the voting systems used are the same voting systems tested.

There is one other resource I'd like to talk about just briefly, and that is technical reviewers. EAC is going to use its resources to employ technical experts. These experts will provide technical guidance to policy makers and EAC throughout the certification process. One of the main functions of these individuals are to review the work of the test labs. They are going to do this throughout the process, both at the beginning of the process and end of the process. EAC will review and approve EAC test programs at the very start of the process when the test report is given, and the test report is a report laboratories create.

The test plan. Test plan is a document laboratories create when they test a voting system to a particular standard. EAC will review that to make sure that the plan processed is going to be necessary to meet the requirements. Then at the very end of the process, the EAC will, again, use experts to review the reports to insure that the tests proposed to the test report have been accomplished and the results are such. Beyond resources, I know there are a number of federal
policies that will benefit the system. One is
the federal standards of conduct. As a federal
agency, EAC and employees must follow federal
statutes and regulations concerning their
conduct. All of these federal statutes provide
criminal penalties, criminal liability.
All EAC involved in the certification program
will be required to follow ethics regulations
and laws. The best example of this is, of
course, federal requirements for financial
disclosure and conflict of interest.
Everyone who participates in this
program on behalf of the EAC will be required to
file a financial disclosure form. This form
will require them to disclose their financial
holdings and assets as well as outside
activities of employment, so we can be sure
nothing they are doing or nothing they own will
effect their ability to make decisions in the
process. That upholds the integrity of our
process, and protects the EAC employee as well.

Another policy that's brought to bear
is that of transparency. As a federal agency,
the EAC is required to follow federal laws and
regulations regarding release of information.
We strive towards transparency in the
certification program. This means EAC intends
to make each testing and certification document
available to the public, as long as not
prohibited by the Freedom of Information or
Trade Secrets Act. Both these acts provide
protection for certain types of information.
Trade Secrets providing some penalties to
persons who release this information.
Our policy is we want to keep this
whole program transparent as the law applies.
An example of this would be our intent to
publish on our web page -- I am sure Brian would
confer the final test results of voting systems.
This policy will serve to increase information flow to the public.

I think I have used up my time so I will save the rest of it and look toward to your questions.

CHAIRMAN DEGREGORIO: Thank you, Mr. Gilmour. Ms. Saunders.

MS. SAUNDERS: Thank you. This conformity is laid out in Section 231 of the Help America Vote Act. The Commission has chosen to carry out those responsibilities by accrediting test labs that tests through the National Voluntary & Accreditation Program administered. It is a program in my division. NVLAP have a voluntary program to accredit labs found competent to perform specific tests or calibrations or types of tests or calibrations. The program was established by NIST in 1976 to serve the needs of the Government and private sector by fostering and promoting a uniformly based and technical competence in the laboratory community. The program provides unbiased, third-party evaluation and recognition of competence, as well as expert technical guidelines to upgrade laboratory performance. NVLAP procedures are codified in the Federal Code of Regulations, formal recognition that a lab is competent to carry out certain tests using recognized criteria and procedures. General criteria are based on an international standard, 170235 general requirements for the testing of calibration laboratories. These standards are used for evaluating laboratories around the world. Lab accrediting bodies, including NVLAP, access factors relevant to the laboratory's ability to produce precise, accurate test data, including technical
11 competency of the staff, validity and
12 appropriateness of the test methods, testing and
13 quality assurance of tests and calibration data.
14 Laboratory accreditation programs also specify
15 field specific criteria that contract labor must
16 meet. In addition to these technical criteria,
17 contract and NVLAP program, the specific
18 technical criteria are contained in NIST
19 Handbook 150-22, NVLAP voting system testing.
20 Laboratories seeking accreditation to
21 test voting system hardware and software are
22 required to meet the NVLAP criteria for
23 accreditation which include, as I mentioned
24 earlier, NIST Handbook 150, the generally
25 criteria 150-212, the 2002 voting systems
26 standards, the 2005 voluntary voting system
27 guidelines, and any other criteria deemed
28 necessary by the EAC.
29 Labs are required to complete the
30 NVLAP application process and pay applicable
31 fees. Rigorous on site assessments must be
32 conducted, and labs undergoing an assessment
33 must resolve any identified non-conformities
34 before accreditation can be granted.
35 To be accredited by NVLAP, a lab must
36 perform a core set of voting system tests in
37 house. Testing is specified in the Voting
38 System Standards 2002 and Voluntary Voting
39 System Guidelines 2005. Of those tests, the
40 core test methods include technical data package
41 review, fiscal configuration audit, source code
42 review, functional configuration audit. System
43 integration test involves tests and security
44 tests. Those are all core tests that must be
45 done in house.
46 Non-core tests must be subcontracted, such
47 as compatibility, telecommunications,
48 environmental, electrical, acoustical and
5 cryptographic. To insure continued compliance, all NVLAP labs undergo on-site inspection during accreditation every two years thereafter to evaluate their ongoing compliance with specific accreditation criteria. So this is ongoing oversight.

Let me take a few minutes to outline the actions that we have taken to date. In June of 2004, NIST published a federal notice announcing any lab which wishes to conduct testing should conduct NVLAP for further information. NVLAP conducted a public workshop in August of 2004 to review accreditation criteria, as well as receive comments, feedback, from participating laboratories and other interested parties. And those workshop documents are available on the NIST web site. After the workshop, NVLAP began finalizing criteria for testing labs, and started making necessary logistical arrangements to begin actual assessment of the labs. NVLAP identified, contracted, and trained technical experts to perform the on-site assessments. So we have a cadre of technical assessors working on this program.

In June of 2005, NVLAP issued a federal register notice inviting interested labs to submit an application for accreditation. There was a 60-day window for the initial applications. And they were given an opportunity to undergo the first round of pre-assessment. Pre-assessment benefits both the lab and accrediting body. Because it's a brand new program, it was an important component of the process. Although not a requirement, it is used to prepare the lab for on-site assessment and it is useful. It gives the laboratory the chance to see how close they are to performing the
accreditation requirements, and also gives the
accreditation body the opportunity to fine tune
the process, and improve the technical checklist
which we use as part of each lab accreditation
program.

Three labs applied in time to qualify for this first series of pre assessments. The last of those pre assessments was conducted this past June. As a result, one of the labs decided not to continue with the accreditation process, where the other two decided to pursue accreditation for voting system testing. Since these initial applications were received, NVLAP has received applications from four additional labs. Thus there are six labs currently in the NVLAP voting system accreditation program. The new labs will receive a pre assessment visit before the actual on-site assessment is conducted. To date, one of these new laboratories has already been pre assessed and remains in the accreditation. So that brings us to three that have undergone pre assessment and are still in the program operating currently.

The on-site assessments, NVLAP completed first on-site assessments under voting system testing program on September 22, 2006. The lab was evaluated for competence to test to the voting systems standards 2002 and the voluntary system voting guidelines of 2005. We're expecting a response to the NVLAP record of the on-site assessment in early November from the laboratory. This means the labs must either correct any non-confirmities found during the onsite assessment or submit a correction plan within the time period that I have mentioned. The corrections will be reviewed by a NVLAP evaluation panel which determines whether the
15 lab's responses are sufficient.
16 Only after the lab has met all the
17 NVLAP criteria for accreditation will it be
18 presented to the EAC. NVLAP anticipates
19 conducting on-site assessment of a second lab
20 before this year ends, probably late November,
21 early December, and completing remaining pre
22 assessments in the first two months of 2007.

1 NIST and NVLAP are aware of how
2 important it is for voters to have trust and
3 competence in their voting systems, and we will
4 work diligently to insure that voting system
5 testing labs are competent to conduct the
6 required testing.
7 Thank you, very much, for the
8 opportunity to provide testimony with the work
9 of NVLAP and its role in supporting the EAC in
10 supporting labs.
11 CHAIRMAN DEGREGORIO: Thank you, Ms.
12 Saunders. I know that NIST has been a partner
13 with the EAC since our earliest days in 2004.
14 We certainly appreciate the work that you do and
15 the others at NIST. I know that you also have a
16 good website, vote.nist.gov, that people might
17 want to take a look at, because I know that you
18 put many documents on that website of the work
19 that you do in voting and for the EAC. We
20 appreciate that, and we appreciate the work that
21 you have done.
22 Fellow commissioners, time for

1 questions. Commissioner Davidson.
2 COMMISSIONER DAVIDSON: Thank you.
3 Mr. Hancock, I receive a numerous amount of
4 questions about why the EAC chose to continue
5 allowing voting systems manufacturer to select
6 and pay for their accreditation lab tests. Can
7 you provide some background on this,
8 information, in the matter.
MR. HANCOCK: Yes, thank you.

We have a number of reasons behind that. The first and foremost is that the EAC does not actually have legal authority to pursue some of the things that we would like to. Congress appropriates our budget, as you know, and this means that we're prohibited by law from collecting money from voting system manufacturers, augmenting, and there is a law, USC 333306(b) miscellaneous receipts act, that prevents us from doing that. If there are other ways of trying to do that, we would be more than happy to hear from anyone out there that would like to talk to us about those. And, essentially, the other reason is most programs that we looked at in other industries allow manufacturers to contract directly with the test labs. That's through the FDA programs, FCC programs. Virtually every other governmental program does it that way.

Gavin, is there anything?

MR. GILMOUR: I would also say that, as Brian says, there are a number of other industries that do this in a similar fashion. As I mention previously in my testimony, we're going to have technical experts that will be reviewing the work of these throughout the process as well. So we'll be involved in that as well as sort of another layer.

COMMISSIONER DAVIDSON: Okay. Next question to either one of you, we hear a lot about the NASED certification program. How does the present draft manual deal with the systems that has been previously qualified by NASED? Will we honor the NASED qualifications?

MR. HANCOCK: The EAC actually does not have the authority to or the desire,
frankly, to repeal NASED qualifications. The
time value that the NASED qualifications currently
hold, they will remain as the states see fit to
do that.

Upon implementation of our program,
we should note that the EAC will require full
testing of any voting system that wishes to have
EAC certification.

COMMISSIONER DAVIDSON: Okay. As we
know, decertification is a very serious matter.
It will impact states and locals and all the
Government. It will also impact the voters and
the manufacturers, obviously.

Can you provide some details
regarding the decertification program?

MR. GILMOUR: A system basically can
be decertified if it is shown not to meet the
actual standards which it was originally tested
to, if it was modified in some fashion outside
of our program. And if the manufacturers just
failed to follow some of the requirements of our
procedural manual that would affect the actual
operation of the system itself or at least call
it into question, these are the things that
could bring a decertification action.

The first step in a decertification
action is a formal inquiry, and the forum of the
informal inquiry is basically to determine
whether the matter should, in fact, be referred
for a formal investigation. The program
director in this case has to determine whether
the information received that would serve as the
basis of such an action is credible. And that,
if true, it would actually serve as the basis
for decertification. It's a very elementary but
important step. We wouldn't want to go through
an investigation, which itself can cause voter
consternation, if it's a completely baseless
claim, so that's the first step.
The next step is a formal investigation where investigators are assigned and a record is created. If the investigation warrants, a notice of noncompliance is issued to the manufacturer. The manufacturer at this phase throughout the process has an opportunity to be heard themselves, if they need to be. And they have the opportunity to actually fix the problem. If they can fix the problem, then this is their opportunity. If they can't, however, they will be decertification, or if they refuse. And they, of course, have appeal rights throughout the process.

So the bottom line is that we took great care in the decertification section to consider, one, the rights of the people that we're going to be decertifying. Two, the effect that it may have on state and local officials, and the program itself. So we created a very detailed and fair process that we would actually use it. A decertification program that is unusable is useless. I think we created a fair, well thought-out process that will actually utilize that process to effectively enforce the program. I think that's an important part, the fact that it's a real thick section of the manual.

COMMISSIONER DAVIDSON: I have one last question for the two of you, whoever would like to answer. I have noticed in the draft manual it doesn't say much about accrediting the test labs.

Will there be additional guidelines and information in this area?

MR. HANCOCK: Yes, Commissioner, there will. As I noted, we'll be working on a lab accreditation manual. We're not going to repeat the work that NVLAP has done, but we'll...
be looking for some of the things I noted, such
as conflict of interest of lab employees, making
sure they have not hired any people with
criminal background issues, with fraud. Those
are the types of things we'll be concentrating
on as opposed to the technical or quality
management issues that NVLAP has.

MR. GILMOUR: We'll be talking to
individuals willing to speak to us to make sure
there is a way that we can hold labs
accountable, to make sure the standards tested
will be used.

MR. HANCOCK: I think the program
NVLAP has set up is good at keeping
accountability within the laboratories.
They do have ongoing monitoring. The first year
-- it's every year, and then every two years
after that. So the labs will be seeing quite a
few of your friends at NVLAP.

COMMISSIONER DAVIDSON: I just have a
follow-up question to that, and I do want to say
I appreciate all the work that NIST has done and
NVLAP. Without you, our program wouldn't be
near what it is today. So I do want to say
thank you so much for your time and efforts.
You had a very shocking testimony. You
interrupted the sleeping and everybody jumped.
I think you woke us all up, but in talking about
shocking and talking about the reviews and
assessments at the labs, will any of these be
surprise visits?

MS. SAUNDERS: Will we go on
unannounced visits?

COMMISSIONER DAVIDSON: Um-hum.

MS. SAUNDERS: In the general course
of events, no. The initial accreditation visit
is scheduled with the lab on the renewal visits.
However, there are provisions under the general international standards that guide the operation of accreditation bodies at the direction of the specifier, in this case, the EAC, or indication of a problem where we could go in for an unscheduled visit, if there is a problem that's identified.

COMMISSIONER DAVIDSON: Thank you, very much.

MR. GILMOUR: And certainly we could allow for it in our program as well. If it is unclear as a standard, as Brian represented, we could allow for that process.

COMMISSIONER DAVIDSON: Okay.

CHAIRMAN DEGREGORIO: Vice-Chairman.

VICE-CHAIR HILLMAN: Thank you. I have for Brian Hancock actually a couple questions. Under the fielded voting system review, you noted that upon invitation or with permission, the EAC could conduct a review of the fielded voting system. If we don't get those invitations, what set of data or information would we be missing?

MR. HANCOCK: Well, we have numerous ways under the program to collect information. In part, something we didn't talk about in our testimony, but under the manufacturer registration program, the manufacturers are required under our program to provide information to us on any voting system failure too that he encounters in a fielded voting system. We have that as a completely separate record.

The issue with the invitation or coordination with local election officials is more to make sure we're working in concert with them. They have their own certification programs. We want to make sure their rights and their procedures under state law are allowed
MR. GILMOUR: If I could add something to that too. The purpose of that is simply the fact that an owner of a machine is in fact. We, obviously, can't go in and look at the system without their permission. But if there was concern, and there was concern whether the system was operated as intended, consistent with the standards we have set, we can go using other elements of the program that Brian talked about. We can go to the actual manufacturer's facility or look at other systems in the manufacturer's possession that are for sale, for example. Although it wouldn't be the actual system that demonstrated the issue at hand, we would still be able to review some of these systems.

VICE-CHAIR HILLMAN: Okay, thank you. I'm going to come back to a question, but I think I will ask something of Ms. Saunders first.

Under NVLAP, what part of that program is voluntary? I understand what voluntary means with respect to a lot of the programs that the Election Assistance Commission runs because the states can choose to participate or not. We don't have the authority to instruct or impose something. So under NVLAP, what part of that is voluntary?

MS. SAUNDERS: Participation by a laboratory, the decision to apply or not submit a fee is voluntary. However, NVLAP accreditation is specified in some cases under law.

The Asbestos Act requires NVLAP accreditation, but participation in the program is voluntary.

VICE-CHAIR HILLMAN: Does NIST itself
accredit labs, issue the accreditation?

MS. SAUNDERS: No. The national voluntary accreditation program is a program operated by NIST. NVLAP makes the accreditation decision and issues the accreditation certification.

VICE-CHAIR HILLMAN: But NVLAP does?

MS. SAUNDERS: NVLAP does.

VICE-CHAIR HILLMAN: Does any component of NIST certify anything that's been tested by labs?

MS. SAUNDERS: In the context I believe you are using the term, as Brian mentioned, certification of products, processes, or systems, no, NIST does not certify products.

VICE-CHAIR HILLMAN: Okay. All right. Do you have any information, experience, that could answer my question about cost to the EAC to run our program. My question is, we're all concerned that EAC has such a small budget. We have been asked to do monumental tasks, and we have very limited funds. One of the concerns is our being able to adequately fund our testing and certification program as well as the component of accrediting the labs.

We always try to do what has been asked and expected of us, and sometimes we really squeeze that buffalo off the nickel trying to do that, and that's not always the right decision.

I just wondered if you had any observations about that.

MS. SAUNDERS: About the cost for the EAC?

VICE-CHAIR HILLMAN: Yes.

MS. SAUNDERS: Actually, that's outside my area of expertise.
VICE-CHAIR HILLMAN: Okay, all right. So then I will move back to Mr. Hancock and Mr. Gilmour on this issue.

In accessing what the cost to the EAC will be to run this program, what are we using as guides, as examples? How are we knowing, as we get into this and as we move forward, where we're going to be with respect to the real cost and what we will need to budget?

MR. HANCOCK: Yes, Commissioners.

That's kind of two good questions. I think, in the future, after we have been in this program, we'll have a very good idea of how much we can budget, especially after the initial period where the manufacturers will be bringing all their systems in. Frankly, right now, because this is a new program, it's never been done before at the federal level, we're essentially relying on information we have collected from other similar programs, looking at some of the workload that NASED did during their qualification of voting systems.

Quite frankly, this is a fairly novel program, but we're hoping with the expert advice we're getting, that we're doing a fairly good job of doing that.

VICE-CHAIR HILLMAN: Thank you.

MR. GILMOUR: I think Brian is using some of the numbers from NASED to give a sense of volume and labor hours, but we're adding a lot to the program that NASED couldn't do. That's where a lot more information is going to come in.

VICE-CHAIR HILLMAN: Thank you.

CHAIRMAN DEGREGORIO: Thank you, Commissioner Hillman.

Mr. Gilmour, what's going to happen between this hearing today and our December 7th
meeting when a final program will be before us
to vote upon, how is the process going to work
for the Commissioners, for the staff to look at
and review the comments?

MR. GILMOUR: This is a good time to
plug in the public comments window. We do a
public comment portal on our web page with the
entire policy manual there to review and make
comments. That is open until the end of the
month. That is one area we're going to receive
comments which are organized for us. Also, we
have got comments here at this hearing which, of
course, we're going to utilize, and other
things. Staff has comments as well that we're
going to listen to. We're going to gather and
review those comments. At that point in time,
obviously, public comments, you can get public
comment on an issue that you could diametrically
oppose.

We, staff, in the initial phase will
make proposed amendments to the plan, and we
present that to the Commissioners. And the
Commissioners are, ultimately, the policy
determinators who will review the reasons we
made the changes we have, and the changes
themselves. At that point, after we have
presented it for review, the Commissioners will
make a final determination and the document will
be published finally in the Federal Register
regular at that time.

CHAIRMAN DEGREGORIO: When does it
take effect? Assuming that it's adopted on
December 7th, when does it take effect?

MR. GILMOUR: That's another part of
that policy determination. It can take effect
on that day or it can be January 1st. That is
also a policy decision that can be made. That
moment we go public on December 7th or between,
we could say, for example, we could say
registration to begin December 7th and the full
program will begin January 1. That is among the

1 policy options available.

CHAIRMAN DEGREGORIO: Mr. Hancock,

would you summarize for me your thoughts on the
top three or four important points for people to
know about this program that is different from
the previous NASED program that I know you are
familiar with also?

MR. HANCOCK: Yes, Mr. Chairman,

absolutely. I think there are three points that
all of us have kind of hit on here that we
really need to bring out and keep hitting on,
and that is the fact that, for the first time
ever, we're instituting a process whereby we're
monitoring the voting system manufacturers and
the labs that are doing the testing to our VVSG
or VSS.

We're providing accountability to the
vendor communities, should either of them be
found to have systems that don't meet the
standards, or as Gavin noted, don't meet some of
the policy guides here. And finally,
importantly, it brings transparency to the
testing certification process.

CHAIRMAN DEGREGORIO: Mr. Hancock,

there's been a lot of media reports academics
who have come out and had concern about
potential for hacking into voting systems. And
we have looked at this issue, I know, ourselves.
Are you aware of any instance, has there ever
been any attempt by anyone to hack into the
voting system during an election period?
MR. HANCOCK: Mr. Chairman, to my knowledge, no, there has never been anything that we have ever found, or I have ever seen, or looked into, or anything that's been reported that has happened on Election Day.

As you know, most of the studies and issue coming out have been done in what I would call sort of a laboratory environment as opposed to a real election environment. Because, as you know, they are very different things.

CHAIRMAN DEGREGORIO: Do you see that this program, coupled with our voting systems guidelines that were adopted in 2005, would help prevent opportunities for people to try to hack into systems?

MR. HANCOCK: Oh, I think so, absolutely, and for a number of reasons. I know that, first of all, the work that our friends at NIST have done in the past several years and continue to do for the new updates to the standards are going to address even more strongly security issues, issues of using wireless technology, and others that we have heard about in the newspapers. So from the standard setting standpoint, it will be crucial. Again, from our standpoint of the testing and certification program, we will also have recourse, as Gavin said, if issues come up, to have the ultimate sanction, which is decertification under this program, and I doubt any inventors wants us to use that sanction.

CHAIRMAN DEGREGORIO: A week from Tuesday, millions of Americans are going to be using all kinds of voting equipment throughout the United States. Certainly, today, we know that thousands of Americans are voting early or voting absentee on electronic voting systems. Based on the notice, can the American public...
MR. HANCOCK: Yes, Mr. Chairman. I think the American public should have that confidential, and for a number of reasons. First of all, I have great respect for the work that was done previously under the NASED program but, in fact, no budget. But more importantly, as we know, the machines are only a small part of a much larger process of laws and administrative procedures that are going to be in effect to protect the voting public and the integrity of the system.

As you noted from your very kind remarks, I have been in this mill for quite awhile. I've worked with thousands of election officials throughout the country, and I have found as prospectus of the most dedicated public employees. So I trust those individuals.

CHAIRMAN DEGREGORIO: In saying that, why do we need the certification program?

MR. HANCOCK: Well, no system and no election system is perfect. I think we need to move ahead and continue to improve the process that we have. And I think, as you know, we're going to have that value added with this process by bringing a written manual, by bringing procedures, by bringing resources of the Federal Government into this, to have a more closely monitored system.

CHAIRMAN DEGREGORIO: Thank you.

Speaking of resources, I am going to ask the executive director a question. How much research, how many federal dollars are we putting into this, our guidelines programs? How much money are we spending on this?
DIRECTOR WILKEY: Mr. Chairman, in our 2007 budget, for example, our committee, a substantial portion of our budget -- as you know, we don't have our budget yet. There is some continuing resolution. The appropriations committees have considered this very favorably, and we have a 17.1 million dollar budget. Of that, 6.3 million will go for our certification program. Of that, 4.9 million to NIST. Mr. Hancock mentioned comprehensive test sweeps that are going to be done. And so 4.9 million to NIST itself to do that comprehensive piece of work, and we're looking at continuing that.

The remaining 1.4 million is for our own use, hopefully, being able to add two additional positions to assist Mr. Hancock in his work, take care of staff travel, to certainly pay for what we hope will be qualified peer reviewing, in reviewing these test reports, and the necessary travel money available to us, if we need to go and look at facilities and do that kind of work.

So we have committed a very substantial portion of our budget to that process. I might add, based upon the question that was posed earlier, we have been very fortunate over the past couple of years that the requests that has made to us through NIST in '05 and '06 have been -- most of them have received favorably. So we're very grateful for that.

CHAIRMAN DEGREGORIO: Thank you. I'm going to turn to our counselor, see if she has any questions.

MS. HODGKINS: I just have two brief questions, Mr. Chairman. Thank you for the opportunity.

Mr. Hancock, I may have missed this in your testimony, but I just wanted to go back
and make sure that I understood it. In developing this program, was there any model that was used, any other Government program that was involved?

MR. HANCOCK: Yes. We looked at several programs. Specifically, we looked at the FCC, talked to some folks there in some of the programs, very extensive programs. We pulled some of their comments to use.

MS. HODGKINS: Thank you, very much. Mr. Gilmour, one other question. I think that it's very important that you brought out in your testimony the transparency that EAC will bring to this process as a part of our requirements to operate under the Freedom of Information Act, and I just want to make sure I understand the perimeters under which we can release information.

I think I understand the Freedom of Information Act and what is required to be released there. I was wanting to make sure I understand any restrictions that might be on that law that we have to follow as well.

MR. GILMOUR: Obviously, both of those have a lot of various things, but the pertinent part deals with trade secrets and commercially protected information.

Certainly things in VOYA (sic) are optional. We have the right to withold. We don't have to, but when the Trade Secret Act comes in with VOYA, the EAC has an obligation to protect the information. This information we're talking about, and I am really oversimplifying it here for the purposes I think is sufficient, concept of releasing information that would commercially harm an organization by, basically, allowing you to produce the very thing they are selling. Basically, things that would
commercially knowledge our information. It is very limited. Some people think it's extensive, but it is somewhat focused. We'll be working, in fact, by executive order to have back and forth with the submitters of information, but we'll be working to release as much information as is allowed by law. That is the policy. The Commissioners have a group before us, and we'll be working to do that.

MS. HODGKINS: Thank you.

DIRECTOR WILKEY: Just following up,

first of all, I told you certainly that I am very proud of the work you have done in this, a tremendous amount of work. To Ms. Saunders, we value our partnership.

But I wanted to follow up on the transparency because I know in your discussions with FCC and a consultant has worked with FCC, there are other things that could perhaps be made available. I know, for example, at FCC, you can get on their web site, take a look at the internal parts of the telephone.

Have you given any consideration or, Mr. Gilmour, is that prohibited by some of the laws you're talking about, in terms of our work? And Ms. Saunders, as a follow-up, how much of the NVLAP process will there be some transparency, because I'm sure that we'll have similar type questions as to the lab result; did they meet all of the requirements, how do we know they have met all the requirements, other than you just giving us internally a report.

MR. GILMOUR: In this process --
economics, technology, and law. It all sort of converged in this area.
The EAC will be responsible in some respects for being the referee. It can potentially receive action, even lawsuits, from people who want the information and people who gave the information, which is somewhat of a little complicated place to be. In this vane, we have to look at these three things, and each marketplace is different. If you look at case law, it's almost a little depressing because you will see in different areas, the Courts have ruled on the same information in different markets completely differently. So we have to look specifically at this particular marketplace, which is unique, certainly different than the FCC market. That is a highly competitive, fast moving market. I wouldn't suggest this marketplace isn't competitive, but it's a different animal, a lot less layers, a lot less, frankly, access to the systems. So each thing has to be looked at independently.

We're hoping to sort of avoid showdowns at the moment.

We have met with industry and we would like to make very clear to avoid conflict. Our policy is we want to release as much as possible. We'll be required by law to conduct them first. If we think something may be protected by these provisions, we have to write them and say, look, we're thinking about releasing this information. And we're going to preemptively work that through some of these issues.

Now, we probably won't come to agreement on something in which the EAC just has to make a stand, make a call, but we're going to try to avoid conflict at much as possible. But the EAC is the authority and will make the call
DIRECTOR WILKEY: Thank you. Ms. Saunders.

MS. SAUNDERS: Well, at its base, laboratory accreditation is all about competency and technical competence. The process of that NVLAP administers is transparent in that it's laid out in the Code of Federal Regulations so that it's clear what the components of the process are. The actual relationship with the laboratories while they are the accreditation process, the amount of information that's made public, is at the discretion of the labs. Particularly, as an accreditation body, NVLAP does not publish the names of applicants, for a very good general reason. In general, some of those applications may not make it through the accreditation process, and it could be commercially damaging to divulge candidates in the case of the federal communications system. And in the case of any other specifiers, such as the EAC, with the permission of the laboratories, divulge the name of the applicants.

The relationship that NVLAP has with the labs is protected under the Freedom of Information Act. We do have requests. We do make certain information, not business, confidential information that is protected from disclosure under file. We can provide the Election Assistance Commission whatever is required.

So there is a clear balance between openness and transparency of the process, protecting confidentiality of the individual candidates as they move through the process. We have to balance the business confidentiality aspects with the broader public need we would...
16 here from the EAC.
17 DIRECTOR WILKEY: Thank you, Ms. Saunders.
19 CHAIRMAN DEGREGORIO: Thank you, Ms. Saunders, and thank you, panelists, for your information, and in answer to our questions. We appreciate that.

We have other panelists today who will give us some instructive advice regarding what you have just told us. Ladies and gentlemen, we're going to take a seven-minute break right now. We're going on we want to get through our next panel before we have a lunch break. So we ask that our panelists be ready seven minutes from now thank you.

(Short Recess.)

CHAIRMAN DEGREGORIO: If we could have everyone take their seats, please. Thank you all.

Well, our second panel today, we have manufacturers of election equipment who are representing the manufacturers of election equipment, and we have testing laboratories. Our panel includes Ian Piper, representing the Election Technology Council, the Information Technology Association of America. Mr. Piper has active participated in the ITA election Technology Council on standards certification and testing issues. He is also the compliance officer for Diebold Election Systems, Inc. and has over 16 years of experience in the election industry.

Frank Padilla and Keith Wilson are here representing Wyle Laboratories. Mr. Padilla is the supervisor of the Wyle Laboratories voting system machines lab. Prior
9 to coming, Mr. Padilla served in the Navy for 22
10 years, including being operations maintenance
11 manager and electronics technician for a
12 satellite communications facility.
13 Mr. Wilson is also here to answer
14 technical questions, general manager of Wyle
15 test and engineering, facility responsible for
16 all Huntsville, Alabama based Department of
17 Defense commercial nuclear engineering and
18 testing activities, quite a lot.
19 Last, we have Mr. Brian Phillips.
20 Mr. Phillips is the president and company
21 manager of SysTest Labs. Mr. Phillips lead the
22 company to the process with the EAC and voting

1 system lab audit process with the NVLAP program
2 that we talked about in the earlier session. So
3 thank you, gentlemen, for coming.
4 Mr. Piper, we will start with you.
5 MR. PIPER: Good afternoon, Chairman
6 DeGregorio and Commissioners. My name Ian
7 Piper, compliance officer, for Diebold Election
8 Systems, Inc. and I am here to provide testimony
9 on behalf of the Information Technology
10 Association of America and Election Technology
11 Council.
12 The ETC is pleased to respond to your
13 request for vendor perspective and comment on
14 the manual for the voting system testing and
15 certification program. Indeed, our member
16 companies have a great stake in the successful
17 launch of this program. For our companies, it
18 is an imperative that the new program be widely
19 adopted in the states, creating a consistent and
20 economical set of requirements for voting
21 systems used in American elections.
22 Our members wish to thank EAC,
the focus and urgency with which you have all
moved looking forward with both the Voluntary
Voting Systems Guidelines and the developing of
a new voting system testing and certification
program. We commend the Commission, your staff,
and NIST for opening the processes for input
from all concerned parties.

Having said that, there are several
additional considerations that voting system
vendors believe must be acknowledged and
accounted for in laying account. Issues our
members wish to raise include: One, increasing
testing frequency and repetition, two,
developing new uniform, economical testing
practices, and three, certification for systems
developed under a previous standard.

On decreasing testing frequency and
repetition, state and county officials face an
ever increasing volume of federal qualification
and state testing activity. Reducing the cost
and delay imposed by continual and often
repetitive testing should be a key consideration
of the new certification process. By combining
the federal level ITA certification testing and
a few basic state level tests, the EAC would
streamline the system certification process,
saving valuable time for election officials and
reducing redundant, non-value added costs for
everyone.

The members of the Election
Technology Council urge the EAC to allow for
state petitions to augment federal test plans
with testing of select state requirements.

On developing new uniform, economical
testing practices, not only is the testing of
system systems for the purpose of obtaining
federal and state certifications becoming too
frequent and overly costly, the situation may
soon be aggravated by the need for new and
20 fairly complex tests mandated by the 2005 VVSG.
21 The guidelines put forth several new
22 requirements for which no appropriate tests

1 currently exist. According to experts in the
2 standards and testing field, the most
3 challenging tests may prove to be in the area of
4 system usability and security.
5 Further, the advent of state-mandated
6 volume testing has dramatically increased costs
7 of certification in some states. Volume testing
8 incorporates the use of at least 100 DREs, each
9 unit counting hundreds of ballots over the
10 course of days to emulate the Election Day
11 experience at a polling site. While the goals of
12 this type of testing are worthy, cost increases
13 have resulted. Without the development of new
14 tests that are informally applied for testing
15 lab to testing lab, and designed from the outset
16 to diminish the need for repetitive tests, a
17 potentially vast new area of vendor expense may
18 be created. Testing expense has the potential to
19 drive up voting system costs significantly and
20 slow the entry of new systems into the market.
21 Testing
22 The FCC believes that the EAC, NIST,

1 and other groups, should quickly take steps to
2 begin work on developing more uniform and
3 economical testing for voting systems. Vendors
4 would like to see more progress in designing
5 tests for new VVSG requirements, and we remain
6 willing to work closely with the EAC, NIST, and
7 the voting system testing labs on such issues.
8 On certification for systems
9 developed under a previous standard, in previous
10 communications with the EAC, we have asked the
11 Commission to recognize retain the good and
12 common elements of the pre-existing NASED voting
system certification procedures. We expect that the EAC certification process will likely incorporate several of those elements. However, one element of the current NASED certification process that the EAC has indicated it may carry forward is the discontinuation of certifying voting system platforms that were certified under a previous standard. It is important that the Commission understand the economic and election performance impacts of such a step on state and county election administrators, the voters, and vendors.

We know that stopping any and all certification testing of 2002 compliance systems by a certain date, without an appliance for implementing state required enhancements or to correct errors found, will impose economic consequences on states or election jurisdictions which have recently purchased 2002 systems. Due to the many meaningful changes made under the 2005 VVSG, there may be no way to economically retrofit some systems to be fully 2005 compliant. Such equipment may have to be discarded and new procurements undertaken. Without additional federal funding to the states, lack of a phased implementation, has the potential to slow state adoption of the 2005 VVSS and EAC certification program. If every proposed software and hardware modification triggers submission for full system testing under the 2005 Guidelines, there may be no way to keep 2002 certified equipment in the field.

We have several other smaller concerns for the drafting of the manual on the testing and certification program. Those concerns are laid out in written testimony we submitted, and they have been covered in
communications with the EAC staff. The ETC and members are committed to work with Congress, EAC, NIST, and our customers to achieve successful implementation of the 2005 VVSG and EAC testing and certification program. Above all, we're in it to providing security, accurate, reliable, and accessible voting systems, and fulfilling not only the mandate but the vision of HAVA. State adoption of the federal voluntary voting system guidelines and the voting system testing certification program is what makes the federal standard effective. If the goal is to improve states, then the impacts of repetitive testing, new test requirements, and limiting the options for upgrading equipment need to be carefully considered.

Thanks, again, for giving us the opportunity to be here today. I look forward to asking any questions.

CHAIRMAN DEGREGORIO: Thank you, Mr. Piper, and thank you for keeping within the five minutes.

We remind our fellow panelists, we're asking you to keep it to five minutes. We appreciate the written testimony that you all provided, and it's a lot more detailed than what you are stating today. We appreciate if you keep to five minutes.

MR. PADILLA: Good morning, Mr. Chairman and committee members. Thank you for inviting Wyle Laboratories to participate in the hearing today, providing us with the opportunity to talk about the proposed testing and certification program.

Wyle Laboratories was founded 57 years ago as the first independent testing laboratory for systems and components under
1 harsh environment, including dynamic and
2 climatic extremes. Today, Wyle is the world's
3 leading environmental simulation laboratory,
4 with nearly 3,000 employees. We are engaged in
5 test and evaluation activities across the U.S.
6 Wyle provides testing to the
7 aircraft, military, space, communications,
8 transportation, and power industries. We
9 maintain expertise in the critical technical
10 areas to insure we can provide realistic
11 simulation of the environment in which a product
12 will function, and that we can take accurate and
13 objective measurements of how the product
14 operates in the specified environment.
15 Wyle Laboratories became involved in
16 the testing of electric voting systems in the
17 early 1990s. Wyle was the first company to
18 obtain accreditation by NASED. While Wyle does
19 not certify or approve voting systems for use,
20 our work is simply to test the product in
21 accordance with the required standards, and to
22 documents these results. We do not control the
95
1 listing numbers for the product, and are not the
2 final authority on the acceptability of the
3 system. Our accreditation as an independent
4 testing authority, ITA, by NASED and the EAC is
5 limited to hardware and functional testing of
6 voting machines.
7 Wyle does not perform software, code
8 review, or system integration tests. Since the
9 early 1990's, Wyle has tested over a hundred
10 voting systems.
11 Wyle has a varied customer base. We
12 provide testing services for the original
13 manufacturers of various components to insure
14 that the items meet requirements that their
15 customers demand, or our client might be one of
16 many government agencies that exist to ensure
compliance with regulations at all levels.

Although most test are performed in response to some type of regulations, there are many tests that are performed solely to support the manufacturer's reliability improvement goals or to significantly reduce the risk of product failures and associated costs.

Wyle often participates in the development of testing specification or standards with government agencies or industry committees. Wyle takes great pride in the fact that its reports are universally accepted as sound, factual, reliable, and unbiased.

Wyle makes it a priority to avoid conflict of interest in its activities. We have no business or financial interest in any product that we test. Wyle employees are required to meet strict ethics and conflict of interest rules as a condition of their employment.

Wyle is bound by the policy and ethics with respect to privacy of our clients. We view the relationship between an independent testing laboratory similar to that between a lawyer and a client or between a doctor on a patient. As a matter of policy, Wyle does not discuss any client by name, nor will we release any test information or data without written consent from the client. Simply stated, test data belongs to the client and are not ours to share with third parties. This is standard for all the independent testing labs in the United States.

It is not uncommon, however, for test results from an independent source to become available to the ultimate buyer of a product. For example, in nearly all cases, environmental qualification testing for military equipment,
qualification in the form of a report, which the
equipment developer must provide.

In the case of voting machines, Wyle is an ITA operating under the auspices of the
EAC, which sets the testing standard and
requirements under which Wyle operates. Wyle's role is to provide testing and evaluation
services as set forth in the current voting system standards. Wyle is committed to work
with the EAC within the established guidelines in order to help improve the process used to
accredit voting machines. This program is a positive step by the EAC to standardize the
testing process.

Wyle will be providing detailed, written comments by October 31st, in accordance
with the EAC's request for comments. However, there are a few comments we would like to
provide here. Under 3.5, provisional,
pre-election emergency modification, Section 3.5.3.3 states that a signed statement from a
VSTL that there is insufficient time to perform necessary testing and complete the certification
process. There are many factors that can affect this time frame, and the EAC should assure that
the testing can not be completed at any VSTL in sufficient time prior to waiving any testing
requirements.

Under Section 4.3, it states that the initial application package will contain a copy
of the technical data package for the system submitted for testing and certification. This
package is normally reviewed by the ITA as the first phase of the testing process. The ITA
works with the vendor to ensure that all the required documents are included within the TDP.
what is the anticipated time frame for completion.

Under Section 5.13 states that all test reports will be posted to the EAC web site. Almost all current voting systems contain proprietary information on the systems configuration and operations. Independent testing Labs normally do not release test report data to any other source but the client and who they direct us to release them to. This posting to the EAC web site may allow the vendor's proprietary information to be accessed by virtually anyone, including their competitors or others who may wish to use the information in a destructive way.

Once again, Wyle will be submitting formal comments by the October 31st deadline. Wyle Laboratories and its management and employees work diligently to provide a vital service to government and industry by providing the best possible range and quality of testing services, including protection of the rights to data that belong to our clients. Wyle also understands the importance of voting machines to our election process, which must always operate with complete transparency to foster confidence in the results.

Thank you, very much.

CHAIRMAN DEGREGORIO: Thank you.

Mr. Phillips.

MR. PHILLIPS: Thank you, Mr. Chairman, Commissioners.

On behalf of SysTest Labs, I want to thank you for the opportunity to provide feedback on the testing of the proposed EAC testing and certification program. We feel that this program is one of the key elements required to establish a much needed, consistent approach for testing and certification and a much needed
accountable approach between the three groups that must work together to insure that electronic voting systems are in compliance with the Voluntary Voting Systems Guidelines. The three groups were the EAC, manufacturers, and the voting system test labs.

I myself have reviewed policies and procedures found in the draft testing certification program and have already provided some feedback directed to the EAC and will be providing more written, detailed feedback on these guidelines.

We believe that this program will provide much needed accountability for each organization, and consistency between the three groups, between three groups that will open the process to greater transparency and raise the public's confidence level in the testing and certification process of the electronic vote systems.

We see in this program clarification of the voting system manufacturer's responsibility to the voting systems test labs. In the previous NASED program managed by a very dedicated group of volunteers, manufacturer's responsibilities in the testing and certification program were sometimes vague or left open. It became incumbent upon the labs to define for the manufacturers, based on the NASED committee, what the manufacturers needed to provide in order for testing to proceed. For example, understanding of the requirements for providing technical data packages, the level of detail in the content, content varied from manufacturer to manufacturer.

Since the TDP contains everything that be will be used, the defining processes associated with delivery of a TDP cannot be
understated. Guidelines will provide much needed clarity to both manufacturers regarding TDP delivery. In addition to other items and activity associated with the testing engagement, more clarification to program provides a definition of roles of the VSTL. Much confusion and misunderstanding has existed over the role of the labs in previous ITA programs. And

SysTest Labs, for one, is very pleased to find that the EAC has further defined our roles or the roles of the VSTL and there responsibilities through their testing and certification program. We see in this program clarification of the VSTL's role and responsibility to the EAC. As I mentioned, the role of the test lab has been misrepresented or misunderstood by interested parties. The test lab is not nor has it been the testing and quality assurance organization for a manufacturer. The role has been and will continue to be a role whose responsibilities it is to test product to compliance and standards.

Guidelines policies and procedures in the testing and certification program define and help to clarify the lab's role. In addition, as with the manufacturers, the program manual defines the order of activities, interaction between the VSTL, and both defines deliverables and associated time lines to the EAC.

At SysTest Labs, we feel strongly that consistency between the labs is paramount to the success of the testing and certification program. The EAC and the public need to be assured that the labs are meeting or exceeding testing expectations defined by the EAC, NIST, and NVLAP. Much of that will be controlled by
the audit process. We see in this program
clarification of the EAC responsibilities to
both the labs and manufacturers. Compliance,
testing, and certification imply that an
oversight organization exists that will insure
that testing is being performed to expectations,
results are being reported to the appropriate
parties, avenues for feedback, correction of
issues, interpretation of standards and
escalation of conflicts exists. Our
understanding and experience is that NIST,
NVLAP, in conjunction with the EAC will insure
that the VSTLs meet standards for testing,
reviews and evaluations for voting systems.
EAC is the oversight organization for

And in the certification manual, EAC has defined
their role in these engagements, expectation
from both manufacturers and VSTLs, and overall
order of activities associated with testing and
certification engagement. This is a key element
in the program so that there will be no
confusion on the part of the labs or
manufacturers or when or how to interact with
the EAC and what can be expected from the EAC.
Finally, we believe that the draft
testing and certification program will help to
expose the testing process and insure greater
transparency and accountability to the public.
I have read and heard from many organizations
that the testing and certification program has
been secret and not open to the public scrutiny.
I am not suggesting this program creates a fully
transparent testing process. However, it does
define for all to see and understand what the
roles and responsibility are of the various
groups associated with the program. That
coupled with the NIST and NVLAP audits and our
2 approach to testing, open approach at SysTest Labs, we believe, will help ensure as transparent a process as possible with the new testing certification program.

I want to thank you again for the opportunity to provide our feedback for this, and again, you will be getting more written detail before the deadline.

CHAIRMAN DEGREGORIO: Thank you, Mr. Phillips. I appreciate all of your testimony and the work that you do.

I want to turn to Commissioner Hillman for the first set of questions.

VICE-CHAIR HILLMAN: Thank you, very much, gentlemen. Certainly, I look forward -- I am sure the whole EAC looks forward to working with you to do whatever we can to insure the voting public that there is integrity in the voting systems that they are using, and all of you play an important role in that.

And to pick up on the final comments that Mr. Phillips made, just a couple of questions, and then I have a third, final question. In the past, Wyle, did you provide comment on the standards that were being prepared and adopted by the Federal Election Commission?

MR. PHILLIPS: Yes, we did. During the drafting and development of the 2002 standards that were open for public comment, and our staff reviewed the standards and did provide feedback to the committees and similar with the 2005.

VICE-CHAIR HILLMAN: And as you're doing your work, testing voting equipment against the standards, have you ever had an opportunity to suggest back to what would have been then the Federal Election Commission, now the EAC, if you see a gap or something that
needs to be addressed that isn't covered in the standards, has that ever happened?

MR. PHILLIPS: Yes, it has. There have been times when either a gap has been identified or the interpretation of the standards is very open. So as we could get in touch with at the time, the techie, the NASED Technical Committee. That was really our avenue to feedback to NASED.

DIRECTOR WILKEY: Same thing, of course, NASED being a consistent standard requested comments which the labs gave.

VICE-CHAIR HILLMAN: And to the ITA, did you similarly, even after, well, comment on the standards as they were in the process of being involved and after the standards were put in place, any comments on how they were working?

MR. PIPER: With respect to the 2002?

VICE-CHAIR HILLMAN: Yes, or 1990, if you were so doing it then.

MR. PIPER: The Election Technology Council wasn't formed until after that.

VICE-CHAIR HILLMAN: And so you're saying, yes, you all did?

MR. PIPER: Individually, the companies may have done that, but I am not aware of what they might have submitted at that time.

VICE-CHAIR HILLMAN: One of the things that I think is great about what we're doing is being able to provide the kind of transparency to this process that the public wants. You know, balancing what is appropriate, what's not appropriate, appreciating the remarks from Mr. Padilla, from Wyle about What's proprietary information but still the process. Now, I know from experience, a lot of groups,
particularly the advocacy groups, aren't going to bother themselves with the details. It's a very complex process, but when you go through the layers of the process, it does reveal the level of scrutiny and assurance that everything that can be done within the realities of budget and timing are being done to insure the integrity of the systems. And we know that election officials are just so overloaded with their work, that they have to rely on the confidence of the test reports that are coming out of the laboratories.

In that context, I do have a question for you. And I know with certainty that you are all well-read and well-versed individuals, and that you are fully engaged in the entire election process and are probably keenly aware of the public debate, particularly through the media, about the lack of security in the systems and the kind of -- or I should say the lack of confidence that is being bantered about. And I am particularly troubled that there are people in this country who believe votes can be stolen from the machines. That's sort of an indictment against the people who are manufacturing the machines, testing, and certifying the machine, and election officials responsible for running the machines. I would like your perspective as to why people believe that the machines are so vulnerable that people can steal votes from them. We will start, ITA.

MR. PIPER: With respect to why, that's a very good question. I would like to understand that myself, but as to the reasons why they think they can be stolen, I don't agree with them. I think the units themselves were designed to be used within the procedures, and with the people. And with all three of those in
combination, that provides security for the

VICE-CHAIR HILLMAN: And as a

follow-up to that, when there is a problem with

the system, there is now more scrutiny and

exposure to all of this than there was ten years

ago. When there is a problem to the system,

what does ITAA believe the manufacturers should
do to address that in a way that provides the

kind of explanation to the voters as to what the

problems is, and what's being done about it?

MR. PIPER: When it comes to

individual problems, I can't comment on what

their policies would be.

From the ITA perspective, I would

think that member companies would want to step

up to the plate and be able to present to their

1 customers what the issues are with the system,

and if it's a design defect, correct that.

VICE-CHAIR HILLMAN: Does the

association have any kind of code of

responsibility on its members on that issue?

MR. PIPER: There is none, but each

of the member companies do have their own codes

of conduct.

VICE-CHAIR HILLMAN: Wyle, either or.

DIRECTOR WILKEY: As far as the

general population goes, there is a general

resistance from paper to technology. I had a

college professor that said any advanced

technology is virtually indistinguishable from

magic. I think, for a lot of people, the voting

machines fit into that category, touch screen

machines, and there is a resistance to that

change. I think we can only overcome that with

education.

VICE-CHAIR HILLMAN: Mr. Phillips.

MR. PHILLIPS: Well, I echo those

same comments, that because of the technology
advancements and the unknown nature of those, a lot of folks don't understand what's actually happening behind the touch screen device. They feel they can have a greater understanding with a piece of paper in their hands.

There is always going to be uncertainty. As individuals began to question validity, and rumors, and the types of information get out into the media, more and more people who are very uncomfortable to begin with will believe that.

As to how votes could be stolen or even have we ever seen anything such as that in our labs, no, we have never seen anything like that in the testing that we've done that that has actually happened.

VICE-CHAIR HILLMAN: And just my final question, just as a follow-up to something you said. You talked about the uncertainty of the touch screen, not seeing the paper. It is not like marking the ballot, and Lord knows we know how that can disappear, a piece of paper, but one didn't see a piece of paper with the lever machines. And I'm just wondering the extent to which there is something about computerized electronic technology that makes somebody less secure, maybe because the lever machines were so much bigger, they weighed what, seven, 800 pounds apiece.

I'm really trying to appreciate what is it about the electronic machine that creates such a high lack of confidence as compared to the levers.

MR. PHILLIPS: I think part of it, the lever machine, you actually flipped the physical switch, or Tom Wilkey, you actually pulled a lever, saw those switches. I think the
whole concept is physically seeing something. I get a lot of this information from my parents in the sense neither of one of them are very savvy with computers. My mother was very resistant to grocery store scanning devices, and never trusted them for years, even though she got a receipt.

So there is -- I think, because it is electronic, they don't understand and perhaps it is a little bit more simple to understand mechanical types of things. That's my only comment on that one.

DIRECTOR WILKEY: One last thought. Of course, one of the larger voting machine manufacturers also makes the majority of ATMs across the world. Nobody has web sites talking about ATMs short changing people, but there are a lot of web sites out there about short changing voters. Great dichotomy.

CHAIRMAN DEGREGORIO: Mr. Piper.

MR. PIPER: Well, again, making voting machines the same size lever machines are, I suppose we could go that route, but no longer would they be portable, and usability would go down as well.

VICE-CHAIR HILLMAN: Thank you, gentlemen. Very much.

CHAIRMAN DEGREGORIO: I'm going to take the next series of questions. Mr. Piper, in your testimony, you say the members of the Electronic Technology Council urge EAC to allow for state petitions to audit federal test plans for the testing of test requirements.

What do you mean by state petitions?

MR. PIPER: They actually will take the foundation, the federal certification program that lays out, and they put it upon that
10 with their own tests. So in some cases, they
11 delete some, and in some cases, they add to it.
12 With the addition of states being able to say to
13 the EAC, we would like to be able to allow your
14 VSTLS to have the vendors ask them to test to
15 these additional requirements. And, therefore,
16 when the report is made up, then we can count on
17 that as being a valid test that we can approve
18 for our own state certification.
19         Now, it would be up to the vendor and
20 what jurisdictions they would want to market in
21 as to which of those state tests would be
22 applicable to that program, but the idea is to

1 reduce the amount of testing that's being done
2 and the repetition.
3         CHAIRMAN DEGREGORIO: You asked us in
4 your testimony to have a more concrete
5 definition of anomalies. What's your definition
6 of anomalies, what do you define as an anomaly?
7         MR. PIPER: I would say something,
8 that it would cause the voting system to fail in
9 regards to the requirements that the VVSG
10 outlines.
11         CHAIRMAN DEGREGORIO: So would a
12 failure then also mean if it doesn't meet one of
13 the guidelines regarding counting ballots,
14 meeting 301(a) compliance to people with
15 disabilities?
16         MR. PIPER: Correct. When it comes
17 to anomalies, what sort of credibility reports
18 will be reviewed, what's the threshold for
19 credibility for those reports as well. The
20 anomalies, where do you draw a line and say,
21 well, this is not really error in the system.
22         CHAIRMAN DEGREGORIO: I think it

1 would be helpful if you all would provide us
2 with some of your suggestions. I think we'll
take a look at this issue, in fact, to have our
own definition or some definition sitting here.
We may have a different take on it, but I think
it's important to hear from you what you think
it should be.

MR. PIPER: With the ECC organization, we could put something like
together for you. I don't know that we would be
able to get it to you before the deadline for
the testing certification program, but if that
was meant to be an interpretation beyond what
the actual manual provides, then we can
certainly get that to you.

CHAIRMAN DEGREGORIO: I'd like to ask
perhaps all of you about this issue of volume
testing of voting devices, and what takes place
there. I voted a couple weeks ago in St. Louis
county. I am going to be up there for the
election. I voted on the touch screen device.
There were 3 to 500 people voting every day on
these devices. So I estimated that the one
device that I voted on would probably have over
a thousand votes cast on it by the time they
take the results off for Election Day.

And we have heard in Calvert County,
North Carolina, in 2004, the problem with one
machine, again, it was a human error, but
nevertheless, over 7,000 people voted on one
device, and 3,000 votes were lost. Again, human
error, but it's a big volume for the use of one
device. Does it necessarily happen on Election
Day, but it happens leading up to this election,
more use of absentee voting. We have more
extensive use of one device.

Also, we have 27 states that will now
requiring voter verified paper audit trail by
paper devices attached to the touch screen
machines that in 2004 we had one state. We've
seen some problems with these devices in the
20 primaries this year, with paper jamming, ink
21 failing, those type of issues.

In the volume testing that you do to certify this equipment, do you do that kind of
extensive testing so that when something is certified, these issues are worked out, because
we have set standards forth in the 2005 guidelines that were not there before.

But with these kind of issues, how do you look at this issue of volume testing, how much do you actually do?

MR. PHILLIPS: We actually have a number of tests that we run. One significant test is the test that actually requires us to -- I have got to get the terminology correct, but it is 1.5 million ballot positions which is often 15 to 20,000 ballots that are voted on the machine. That is both on accuracy and reliability types of testing. That is actually run in it's true environment. We have boxes and boxes of the paper receipts from those tests that we keep, and so we actually run quite a few. These are on an individual machine. If the machine has memory limitations, such as what happened in North Carolina, I believe, then we have to run it with multiple machines. But we check for that. We look for memory limitations, how many votes it can handle but we have to run through at least 1.5 ballot positions. Twenty positions on one vote. We have to vote so many of those, and that translates to thousands and thousands of votes. That is running every one of our testing agents.

CHAIRMAN DEGREGORIO: And when you do that, does our certification program work into that process in any way, this program that we're proposing, does it affect that in any way? Do you, from our guidelines, if you look at the
2002 standards, 2005 coming up to deal with this volume testing?

MR. PHILLIPS: I believe so. Jim, they still have those test requirements for 2005. Yes, the same test requirements. Jill Knolls is our compliance director but, yes, they do, and we will still run those same tests. Probably there will be additional tests based on the VVSG.

CHAIRMAN DEGREGORIO: Any other comment?

MR. PADILLA: We all test to the same standards.

CHAIRMAN DEGREGORIO: I'd like to ask this question of who pays testing laboratories here, because you have extensive experience with many different manufacturers, all kinds of equipment that's used in our everyday life, things that they do. Is the Federal Government or a state government, is somebody other than a private vendor, any governments ever pay you to test equipment?

MR. PADILLA: Well, the short answer is yes, but rarely. Generally speaking, before anything is fielded or put forth to a consumer, the testing has been completed and the product has been certified. Occasionally, after something has been fielded in the military or wherever, there is a problem, and the Government will come back for additional testing that doesn't go through the manufacturer, but the greatest preponderance of everything that is tested in the United States, the manufacturer tests, it certifies, passes along the report to whoever the ultimate user is.

CHAIRMAN DEGREGORIO: So it's private industries that are paying, for the most part,
but there have been cases you're telling me the Federal Government has stepped in to pay for a specific test of something that they may have discovered some problem with?

DIRECTOR WILKEY: Right, but the greatest preponderance is done with the manufacturer.

MR. PHILLIPS: At SysTest Labs, it is a little bit different. We focus primarily on software. One of our major lines of business is what's called independent verification validation. It is very extensive software testing, as much of what goes on in the IT world. That is generally paid for by the state governments. It is a contract that we have with the state agency, could be the Department of Labor. Whoever is asking a manufacturer to build a system for them, they actually hire an independent organization to come in, do testing reviews of that system independent of the manufacturer.

We've paid by the state agency, and the Federal Government has the same type of program. A lot of Department of Defense systems in my past life in the defense world, we did a lot of things with the Air Force doing testing and certification of software systems for the Air Force. So we do have probably 40 percent of our business is actually paid for by the Government.

CHAIRMAN DEGREGORIO: Thank you.

COMMISSIONER DAVIDSON: Thank you.

My Commissioners have done a great job with this committee, but Mr. Phillips, to go back to the product that is developed at the time you are doing the testing on that.

MR. PHILLIPS: That's correct.

COMMISSIONER DAVIDSON: I came from
Colorado, so I am very familiar with IV&V.

MR. PHILLIPS: That's correct.

COMMISSIONER DAVIDSON: This one is a little different where it is completed, hopefully, from the manufacturer to do the test.

MR. PHILLIPS: That's correct.

COMMISSIONER DAVIDSON: I want to do clarify that for anybody who wasn't familiar with IV&V.

Mr. Piper, one of the things that you said in your testimony that you felt like the 2005 VVSG was going to require some re-engineering on hardware. If so, can you tell me what that re-engineering might be, what it might require.

MR. PIPER: To provide you with some examples, you can take a look at things like the set up validation of the system. We're looking to have some sort of method to try to get the information from the internal memory of the unit to try and do a verification of that. Now, where that's possible, things like programmable memory devices where you pull them out and test them with embedded flash memory on circuit boards, there needs to be some development to try to provide access to that area in order to pull that information off. So I know that through the VVSG, there are some requirements there to say that you can use, you should try to use some third party software, try and get that information off, and some sort of an external port, but right now, there just doesn't seem to be any agreement as to how you would manage to go ahead and do all of that. That's a concern that's going to cause probably the development of some solution, a change to the hardware platform whereby upgrades are necessary, or if it's not, upgrades replacing whole systems.

COMMISSIONER DAVIDSON: Thank you.
We were discussing the difference between a lever machine and the electronic, and I think if we go back in the history and look back into the news clips, we will find there was the same type of iteration in the news media about how bad it was going to be to go from paper to the lever machines or lever machines, however you want to pronounce it. So I think if we go back to history, we're creating history over again, because it is a new creation of a type of voting.

We have always had issues with almost any type of voting process we go through, and that's why the process, besides the equipment, is so important in the field, I believe.

But one of the things that I also wanted to touch on, Mr. Padilla, you touched on in your testimony that you don't feel we should allow any software out there that hadn't been tested. How do you suggest that we approach it if a court case changes like two days before the election, not to count a name, and software has to be changed in that equipment, or there is a law change after the programing is all set up in a state? Also, an error that is found, how do we do that without saying if somebody's willing to sign off, the state's willing to sign off on that, and we can't actually get it tested, how do you propose that we move forward?

MR. PADILLA: Yes, ma'am. I wasn't really addressing software specifically. My concern there is the way the instructions read, generally, it's well written instruction because in this area, a lot of things can determine where a VVSG can test. My lab's booked three months in advance, whereas another lab might be open and can get that requirement done.
COMMISSIONER DAVIDSON: I thank you.

I think that's my questions. Thank you, very much.

CHAIRMAN DEGREGORIO: Thank you, Ms. Davidson, and thank you for your questions. Let me ask our executive director if you have any questions?

DIRECTOR WILKEY: Thank you, Mr. Chairman. As you all know, I have just a wee bit of familiarity with what you do, and I appreciate the work that you have done over the 22 years. I look forward to your participation in our program, but I'm going to take a little slant. We're now about ten or 11 days out from Americans going to the polls on November 7th. We have estimated that about one-third will vote on a new voting system. You are looking at one of those.

You indicated, Mr. Phillips, I have spent my entire voting career pulling down that lever, but when I go to my polling place here in the District of Columbia, I will not be voting on a lever machine. I will be voting on a DRE. I think it's your last opportunity before Election Day. Hopefully, a lot of people will be watching this and will do some reporting on this.

Is my vote going to count?

MR. PHILLIPS: Absolutely.

DIRECTOR WILKEY: If you go to the polls, yes.

MR. PADILLA: Very much so.

MS. HODGKINS: Thank you, Mr. Chairman, for the opportunity. I did have one or two questions, if you will indulge me.

First, to all the panelists, thank you very much for your comments on our program. We look forward to getting your detailed
I'd like to take a little bit of a step back and talk about something that Mr. Padilla brought up in his testimony, and that is experience with other doing other Government work. I guess the question that I have for you is this, do you at Wyle Laboratories -- and certainly, Mr. Phillips, if you want to respond to this as well for SysTest -- test to programs regulated by the Federal Government? And if so, can you give me examples of programs that you tested, please?

MR. WILSON: We literally do thousands of test programs for hundreds of customers against hundreds of standards. And, yes, we test to FCC standards, certify to FCC standards, and FAA standards, and all the Government military specifications and NASA specifications. Like I said, literally thousands of tests for hundreds of customers, so we're experienced at testing to standards for Government agencies.

MS. HODGKINS: Thank you, Mr. Phillips.

MR. PHILLIPS: Well, at SysTest labs, in addition to the at testing work we do, that we did, we're getting into doing testing for FDA-regulated industries as well. Most of our other customers are commercial organizations that may have standards that they impose upon us from other agencies, but they may not come directly in the Federal Government. We do have standards from some of our state government customers in our ID&D work. There is a significant number of projects that we do every year in that.

MS. HODGKINS: Thank you, very much. I wanted to follow-up on what you said. Would you say that the programs that you test to for
22 other Federal Government agencies are similar to
1 the one that we have here, that is, to insure
2 that a product, a software, a system, meets a
3 set of established standards?
4             MR. WILSON: Yes, that's correct
5 possible.
6             MS. HODGKINS: Using an example that
7 you gave and one that I think probably the
8 audience will be familiar with, is that you do
9 some FAA testing. At the threat of repeating a
10 question that the Chairman asked earlier, who
11 pays for that?
12             MR. WILSON: Generally speaking, the
13 manufacturer. In rare cases, a Government
14 agency will go back and do something after they
15 have already purchased something, and it's at
16 the Government expense, but generally speaking,
17 it is always the manufacturer who pays.
18             MS. HODGKINS: So, for instance, if
19 Boeing Aircraft presented a piece of aircraft to
20 be tested, they would pay?
21             MR. WILSON: Absolutely.
22             MS. HODGKINS: Thank you, very much.

1             CHAIRMAN DEGREGORIO: Thank you.
2 Thank you, gentlemen, for your testimony. We
3 appreciate it. This concludes Panel Two. I
4 also want to thank our signers this morning.
5 They are doing a great job, and our transcriber,
6 who is transcribing our proceedings of this
7 meeting, and also thank our staff members.
8             Burt, we appreciate the work that you
9 do in bringing this all together, and making it
10 happen today. A lot of work went into making
11 this a successful event for us, and we're now
12 going to take a lunch break for everyone and we
13 will resume at promptly at 1:30.
14             (Noon Recess.)
CHAIRMAN DEGREGORIO: Can we have everyone take their seats, please, so we can get started. Thank you. And thank all of you again for coming back for the afternoon session of testimony we're receiving regarding our new testing program that is out there to be commented upon.

This panel that we have before us is a panel of three very distinguished women. I was talking to them before, and they said they just flew in from their vacation in Hawaii. They are going right back to Hawaii because they have nothing else to do right now. That's certainly not true. These woman, we know, are very engaged in the process of serving the voters of their jurisdiction. And we have with us Ann McGeehan, who is director of elections for the Secretary of State's Office in Texas, and serves as director of elections. She's responsible for unifying application, operation, interpretation of all election laws in Texas. She has, I think, perhaps more counties than any other state in the union. She's been a member of the Secretary of States Election Division since 1989, so she's had considerable experience.

Sandy Steinbach, from the state of Iowa, who I met -- maybe it was back in 1989, Kansas City. I know that you have been involved since 1985 in the election process. You have served as director of elections, responsible for supervising county commissioners of elections as they administer federal, state, and local elections in the state of Iowa. Also chairperson of the National Association of State Election Directors Accreditation Board, certainly that is applicable to our discussion today too because Sandy has been very involved
in our staff trying to provide us with
information about the NASED program, certainly
suggestions on how we can move forward with our
own program because the board that she was on,
she was answerable from '94 to 2006 for the
accrediting election systems throughout the
country.

And last, certainly but not least,
because we're in Washington, D.C. and we're
privileged to have Alice Miller with us. Alice
is not only the executive director of the
District of Columbia Board of Directors of
Ethics, she serves on the Technical Guidelines
Development Committee of the EAC, has provided
tremendous help to that committee as it provided
its documents and guidelines to us when we
developed voting system guidelines in 2005. She
has been executive director since 1996. She
served as general counsel for the agency before
that. She's upgraded and enhanced 20-year-old
voting registration and tabulation in the
District of Columbia.

I know that Jim Dixon voted for the
first time in 2004 in private, thanks to your
efforts. So you beat the HAVA deadline by two
years, and we certainly appreciate all of the
work that you and your colleagues there on this
panel have done.

Without further ado, we will turn to
Ann McGeehan for her comments on her program.

MS. MCGEEHAN: Well, thank you very
much for the invitation to provide testimony
today. I do want to say I was very pleasantly
surprised when I did read through the manual.
It is extremely well written, and I think it
represents a huge step forward in the testing,
2 voting systems. I also think the manual was
3 well written because it acknowledges that voting
4 systems don't operate by themselves. Voting
5 systems operate in a much larger framework in
6 the context of federal, state, law, state and
7 local procedures, and the manual recognizes
8 that.
9
10 The manual appreciates states, the
11 states' role in the certification process, and
12 the states' role in maintaining uniformity
13 within the states, appreciates the local role of
14 election officials, the challenges those
15 officials face in the ongoing maintenance of
16 electronic voting equipment, appreciates the
17 challenges of vendors, and you can see that this
18 process will eventually result in a better
19 product down the line for vendors. And then
20 finally and most importantly, the manual
21 appreciates that the entire process must serve
22 the voters, so that voters have increased

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1 think this process will help us get there.
2 I don't have written comments today.
3 I wrote my notes yesterday on the plane, but I
4 will commit these to writing and file these with
5 you before next Tuesday.
6
7 I just have a couple of questions and
8 comments really on some of the more interesting
9 aspects that are contained in the manual.
10 Regarding suspension of registration, the
11 process requires that vendors become registered
12 with the EAC before they can go through the
13 certificate process. And I wasn't clear if
14 suspension could go on indefinitely. I would
15 suggest the way I read the manual is if a vendor
16 or manufacturer is suspended, they can't then
17 put forth any, can't submit any new
18 certification. You wouldn't want that process
19 to go on too long. We wouldn't want to have
19 states using systems for suspended vendors. You 
20 want to put a time limit on how long the vendors 
21 can be suspended before they can be recertified. 
22 Emergency modifications. This was 

1 discussed this morning under 3.5. I think 
2 that's a really good important process to have 
3 because there are always things never detected 
4 until the last minute, so you need to have 
5 flexibility. I think the states involvement 
6 should be required. I think the way it's 
7 written, state or local entities so should come 
8 to the EAC and request their emergency 
9 certification. I would like to say that the 
10 state must be involved. In many states, 
11 including Texas, the state certifies the voting 
12 system, so we wouldn't want, technically, a 
13 local entity to be using an uncertified system 
14 if the state wasn't involved in that process. 
15 The test plans that are set out in 
16 Chapter 4 are excellent, and I'm glad to hear 
17 this morning announced that you would be getting 
18 at least two more technical staff members, 
19 because I can just imagine poor Brian Hancock 
20 reading all those test plans. So I think he is 
21 going to need help to do that, and I was glad to 
22 see that you are contemplating that. 

1 Chapter 5, system identification 
2 tools, I think that's an excellent tool to use 
3 for the local entities and for the states, to 
4 make sure that what's being used are the 
5 certified tested voting systems. 
6 What wasn't clear to me was will 
7 these tools themselves be certified. It seems 
8 like they probably would need to be certified, 
9 but that might even be a condition of 
10 certification, that when the voting system is 
11 certified, since the vendor is providing the 
12 tool, then that tool itself, the identification
13 tool, would be subject to certificate.
14 Section 5.1.5, something like a
15 sticker that would be placed on certified
16 equipment with the EAC seal, I think that's a
17 great idea. I'm sure you are contemplating
18 this, but the way it read in the manual is those
19 seals would be available like a template on the
20 web site. I think you would have some way to
21 track that, just, obviously, that they couldn't
22 be used without authority.

1 Regarding the formal investigation, I
2 guess the formal investigation that might come
3 right before a decertification, it might be
4 helpful to include as another option in the
5 formal investigation that the EAC could require
6 a manufacturer to come back in for the test lab
7 and do a whole new suite of tests. The way it
8 reads right now, the conduct is contemplated
9 that EAC might go to the jurisdiction that was
10 having the problem, but it might also be helpful
11 to lay that out as a possibility, that you bring
12 them back in for a whole new suite of testing.
13 I had a couple questions on the
14 opportunity to cure, that if the EAC is doing a
15 formal investigation, determines there is a
16 problem that needs to be fixed, the manual says
17 that the EAC will allow the manufacturer to cure
18 before the next federal election. And I would
19 like to suggest that you not use that as the
20 deadline. For one thing, you never know when
21 the next federal election is going to be. We'll
22 have a federal election November 7th. We might

1 have another special Congressional election in
2 January in Texas, for instance. You probably
3 want to set a date certain, rather than just to
4 do general federal election.
5 I was curious if the system is still
certified during the period in which the manufacturers are trying to cure the system. It seemed to me that it was still certified, but I wasn't sure, and I wanted to make sure that states and localities using that equipment be notified of whatever bug it is or whatever issue it is, and be notified of any work around during this opportunity to cure period.

Just a couple other quick points on the fielded reviews, again, there is another sort of states right issue, but I would like to urge that you must have the permission of the state before you go in and monitor voting systems in that state. In Texas, for instance, you would not have any real authority to be in the polls unless the state appointed you as an inspector, which I'm sure most states would do very quickly.

The anomaly reports in 8.7, I think that's an excellent tool. I was telling Tom Wilkey we were going to use that format for this upcoming election. I think that will be a great service to track issues that come up.

Next to the last point is on the transparency, the fact that most or many of the certification documents are going to be posted to the web, I would urge that maybe in this manual, a few documents be specifically stated as being required to be posted. What we find in our certification process is many vendors will label every single document filed as proprietary and confidential. And so it might be helpful that the EAC, ahead of time, define what is not proprietary and confidential. For instance, perhaps user manuals would be something that you could state right now that could go on the web or is not subject to trade secret. The manufacturers may have a different point of view on that, but I would say that could be a very
1 time-consuming process because our experience is  
2 everything gets labeled confidential.  
3 And the last point is we really like  
4 to see and I think it is going to happen anyway  
5 from what we heard in the previous panel, is  
6 that the reports be uniform so that we know that  
7 every single standard has been met, and there is  
8 like a discreet chart, a matrix, that shows each  
9 standard has been met by what system. Any  
10 requirements that are discretionary. For  
11 example, we have in section cumulative voting,  
12 it's good for us to know what's been tested and  
13 what hadn't, so we had like a detailed, uniform  
14 test format.  
15 Again, we appreciate it. We think it  
16 is a great move in the right direction, and we  
17 look forward to working with you.  
18 CHAIRMAN DEGREGORIO: Ms. Steinbach.  
19 MS. STEINBACH: Thank you for asking  
20 me to speak to you again. The last time I  
21 addressed you was on February 2, 2006, earlier  
22 this year. At that point, I urged you to assume  
145  
1 responsibility for the accreditation and  
2 oversight of test labs, and I am very happy to  
3 see the progress you have made since then.  
4 The draft program manual for your  
5 voting system testing and certification program  
6 is a very good start. The manual describes  
7 three basic purposes for the program. Voting  
8 systems, support of state certificate programs,  
9 support of local election officials in the areas  
10 of acceptance testing and pre election system  
11 certification, increased quality control in  
12 voting system manufacturing, and an increase in  
13 voter confidence in the use of voting systems.  
14 And I would like to comment on each of these  
15 five stated purposes.  
16 The first purpose for your program
was handed to you with the Help America Vote Act, and it provides you with the statutory mandate to test and certify voting systems. Most of your draft program manual is dedicated to the structure for this essential purpose of the EAC program. Along with the Federal Election Commission's 2002 Voting System Standards and your own Voluntary Voting System Guidelines, you have the foundation to build a very good program. However, the program manual and the standards are not enough. An adequate voting system testing program can not be operated without the hard work of exceptional volunteers.

The NASED voting system program operated for many years with those limited resources. An excellent program that will serve all of your intended purposes will need two things that NASED never had, a budget, and a staff. And we have said this over and over again, but it really is true. As you begin your program, I urge the Commissioners to support the voting system and testing and certification program with well trained staff members and a generous budget. I don't have any specific dollar or staffing recommendations. Your recommendation in your next budget for two more people and your millions of dollars, which is an awesome amount to somebody who's been doing it on nothing, sounds like a good start. Your need for qualified people and additional money will doubtless grow as your program matures, to provide the staff and the nation with the best resources to make your program an excellent one. The program manual says very little about how the EAC will support state certification programs, it's second articulated
purpose. One way for the EAC to do this would be to facilitate the certification of new and updated programs in odd numbered years, starting in January of 2007. There are, I'm sure, a number of vendors eager to get started, to get new or modified systems, and it is very important that the process begin as quickly as possible.

The reason for this is that the closer it gets to Election Day, the harder it is to install and implement a new voting system, even if it's an upgrade to one that's already in use. In the last year or two, election officials found themselves in the helpless position to find out whether their chosen voting system would receive a NASED number with sufficient time before Election Day to make it through state certification as well. The testing process can take a long time. The report review process will also be very time consuming. States that depend on the EAC for the first step or for upgrades will benefit from an early start.

Testing under your new program. The third purpose mentioned in your program manual to support local election officials is not mentioned that I saw elsewhere in the program manual. As you examine ways to provide their service, I hope that you will continue to consult with state and local officials to gain insight into what the local practices are, as well as the state laws and administrative rules necessary to do meaningful acceptance testing. I'd like to second Ann McGeehan's remarks that the states are an important player in this process, and what would provide adequate acceptance testing in state say would not be all that is necessary in another.
The fourth purpose to increase quality voting in voting system manufacturing will certainly benefit election officials. I look forward to additional details in the fielded system review and testing section. I presume that the quality control quality assurance reviews and anomaly reports will be useful in determining which systems would be benefit from field review and testing. And I would like to second Ms. McGeehan's statement that the states, again, should be very involved before the EAC goes in to work with local election officials so that we're able to cooperate with you, and make sure that all the state requirements are met.

Increasing voter confidence is the last of the stated purposes of the EAC voting system testing and certification program. In the recent past, there have been reports of studies that claim to expose flaws in some voting systems. The allegations have been dramatic and frightening. The EAC can help voters and election officials understand these claims by sponsoring a program review by qualified experts to demonstrate dangerous flaws in a voting system. The claims should be seriously examined and replicated, if that's possible.

You are off to a good start, and I urge you once more to support your program generously.

CHAIRMAN DEGREGORIO: Thank you, very much, Ms. Steinbach.

Ms. Miller.

MS. MILLER: I want to first thank the Commission for giving me an opportunity to come here. First, by way of background, in 2003,
Association of Election Directors, which until this year administered the voluntary voting system standards. It was a tremendous responsibility. I believe I can speak for other election directors when I say we were happy to transfer this program to the U.S. EAC. NASED's administration of the voluntary voting system standards was limited by a lack of resources and infrastructure. Transferring this program gives the testing and certification program both the necessary level of resources and level of technical expertise that is needed.

I believe it is also appropriate that the agency responsible for administering certification of voting systems is not the agency that will ever be purchasing voting systems.

Finally, and importantly, in recent debates over voting systems technology, EAC and National Institute of Technology have proven their neutrality and impartiality. Since passage of the Help America Vote Act, a great deal of time and expertise has been devoted to transferring the requirements in HAVA to meaningful, practical guidelines. That document represents a huge achievement.

As an election official with responsibility for guaranteeing the integrity of the election process, I believe that these guidelines raise the bar for vetting systems performance. I want to express my appreciation to the Commission, to the National Institute of Technology, to my fellow election officials, and to the citizens who provide feedback.

The process of developing these guidelines was not without controversy and challenges, was transparent and open.
14 With the release of this draft, the EAC
15 demonstrates it is well on the way to completing
16 the testing and the certification process.
17    Now, more than ever before, it is
18 clear that the process for verifying voting
19 systems must be consistent, must allow for
20 accountability. This draft meets both those
21 criteria. This is a comprehensive and detailed
22 manual that set forth clear procedures for

1 voting systems and testing those systems. By
2 spelling out the procedures for entering the
3 voting systems market, this manual also levels
4 the playing field for current and potential
5 vendors. All vendors will be operating
6 according to the same rules or risks.
7    Finally, the fact that the
8 information collected during the certificate
9 process will be housed and controlled by a
10 single agency offers an enormous benefit. This
11 information will be accessible and available in
12 the event that questions arise about the
13 performance or quality of a given voting system.
14    In closing, I would like to again
15 congratulate the Commission on this draft
16 manual. As an election official, I believe this
17 program will go far in bolstering the public's
18 confidential in voting systems. I believe by
19 this approval process, we're opening the door to
20 greater innovation and improvements.
21    Thank you, again, for inviting me to
22 present this.

1    CHAIRMAN DEGREGORIO: Thank you, Ms.
2 Miller, Ms. Steinbach, and Ms. McGeehan, for
3 your testimony. Again, we appreciate the
4 questions that you have raised and assume you
5 are going to give us that in writing so we can
6 look at those as we formulate the final draft of
7 this program. We appreciate it.
Ms. Steinbach, how would you describe meaningful acceptance testing on your voting systems in Iowa?

Ms. STEINBACH: First of all, we'd have to know that it's going to work in Iowa. Iowa has state party voting, and unusual ways of doing ballot rotation that wouldn't necessarily exist in any other state. So in the acceptance testing process, we need to know that it will actually function in a real election environment that is set up under Iowa law. We do that to a certain extent in the state certificate process, but our state certificate is less elaborate than in many other states. So the acceptance testing is where we're certain that it actually will function in a local election setting.

CHAIRMAN DEGREGORIO: I am assuming from your testimony, all three of you, that you all will utilize this program, that you're not going to have your own program for the district, for Iowa, for Texas, but you're going to look to the EAC certification program. Obviously, that benefits you too, so you don't have to put out the funds to do that, to have your own program.

Do you expect in the next year -- we have this election on November 7th, but based on the equipment that you all utilize within your states, do you expect software and hardware changes that will force the equipment that's being used in the District of Columbia and the states to come before the EAC, come before this program and be recertified.

Ms. STEINBACH: Well, we schedule exams three times a year, and I know that we already have a couple of exams scheduled for January.

We won't review a system unless its
been qualified under the federal standards. The certifications that we have pending in January probably already received NASED qualification. However, our legislature meets beginning in January, and we could see changes, for instance, paper ballot receipt. There's been some talk. Usually, there are changes after a legislative session. It may not be a significant modification, but most likely, there will be small modifications.

MS. STEINBACH: Iowa needs to change its law to recognize your program. Currently, Iowa law requires voting equipment be qualified under the NASED testing program, and we will need to talk to the legislature when they come back in January to make sure that they recognize your program as well. I will certainly be enthusiastically supporting that.

CHAIRMAN DEGREGORIO: Can you see the voting systems in Iowa -- I don't know what you are experiencing this year?

MS. STEINBACH: This is the first year most of this stuff is being used in Iowa. There certainly will be, as there always will, upgrades and improvements made by the vendor, but initially, again, we have a system coming in for testing in November. But I don't foresee a lot of people moving to make big changes in their voting equipment in the near future.

MS. MILLER: We will also have to change -- it's not in our law, it's in our regulations, but we also follow the NASED certificate program. So it will have to be changed to recognize the EAC process as well. That will not be a hard thing for us to do. In terms of changes, I don't see anything coming. The one thing that may be on the horizon for us to be the paper ballot, the receipt for the voter verified paper ballot -- I mean, audit
trail for the touch screen machine, that might
create something that we need to look at a
little bit differently than we do now, but other
than that, I don't foresee any real changes.

COMMISSIONER DAVIDSON: In talking
about the law changes, we notice it's all over
the board throughout all of our states, some
still refer back to the FEC. Some of them, the
NASED qualifications, they are all over. Do you
think NASED would be willing to look at maybe
working together to have a set of
recommendations to states that they would move
forward so maybe our laws are pretty much the
same throughout the nation? Any of you can
comment, if you'd like.

MS. MILLER: NASED's always willing
to work with you. The three of us are all
members of NASED. I don't know that anyone that
I can think of -- that organization is always
willing to, and one of the reasons we have that
requirement, at one point, many states brought
that back and adopted it into their admin code,
so we can certain do that.

COMMISSIONER DAVIDSON: I think that
would be helpful. It would be helpful for us if
it was pretty much the same across the board, as
well as for the other states to have some
guidance.

Another thing that I would like to
know from each one of you, as we know, Election
Day is very closely coming on all of us. I know
you are very, very busy. You have set out
procedures and considered making sure that you
have as much confidence in your voters that you
possibly can for accurate and fair elections.
Can you tell me what steps you put into place to
make sure that the voting equipment is as secure
as possible on Election Day? I will start out
12 with you in Texas, Ms. McGeehan.
13 MS. MCGEEHAN:  Well, we have done
14 several important things this year. First, we
15 issued a very detailed directory on security and
16 testing, and it's very detailed.
17 It goes through the process of acceptance
18 testing, logic and accuracy testing. And some
19 of the changes, because unfortunately, so much
20 of the written state law is paper based, so
21 through our administrative pours, we put
22 together an advisory on how to do this testing
160
1 with electronic systems. Also, post election
2 testing, there is a lot of post election
3 testing, manual counting, and then records
4 retention. So we have spelled this out for all
5 our counties earlier this year in the primary.
6 It was a bit of a struggle, but now it's all in
7 detail. Comprehensive advise is also posted on
8 the web site. I think our counties are in a
9 better position in that state wide, we're
10 developing more uniform requirements to maintain
11 the integrity of the system.
12 CHAIRMAN DEGREGORIO:  Ms. Steinbach,
13 if you want to change or add to that, you are
14 welcome.
15 MS. STEINBACH:  Iowa made a big
16 effort. As this is the first time voting
17 equipment used was in the primary, we learned a
18 lot of things in our primary election about,
19 well, first of all, what we didn't know about
20 our voting equipment, and worked closely with
21 our counties to put together comprehensive pre
22 election and public test protocols for each of
161
1 our counties. And we're working with the
2 counties, monitoring them, sending additional
3 staff from the Secretary of State's Offices to
4 make sure that the testing is being done in the
first place and is going well, and help them
with any problems that they may have had.
So this is the first time in the 21
years I have been in this office that the
Secretary of State's Offices has had the
opportunity and the resources to provide this
kind of pre election hand holding to our local
officials to make sure that our voting equipment
is properly prepared and will function on
Election Day.
COMMISSIONER DAVIDSON: Ms. Miller.
MS. MILLER: Well, in the district,
it is a little bit different because we have the
responsibilities of the states that the states
don't have to the local because we're considered
the local entity responsible for overseeing the
election process.
So we have the state responsibility
and local responsibilities. Obviously, we're
doing all the logic and accuracy program, all of
the programs in the check list, which is long
and detailed. We make sure it is in place and
we monitor that quite closely. When we send our
machines right on, we've done the work to insure
that the system is secure and everything is in
place to guarantee the integrity of that
process.
COMMISSIONER DAVIDSON: I was in one
state, and I noticed on TV that they actually
were asking for people to come in and watch the
L & A process. It was a very transparent
process they were moving through.
Do you utilize that same process in
your states?
MS. MCGEEHAN: Yes, it is public and
notice has to be published 72 hours before that.
MS. STEINBACH: Same thing for the
process in Iowa.
MS. MILLER: It's open. We have
22 never had anyone come in. It is an open
1 process.
2 MS. STEINBACH: We have had people
3 come to pre election public testing before this
4 year for the first time. We had been invited in
5 the past and not shown up. Frankly, they got
6 bored and didn't stay around for the whole show.
7 It is a long process.
8 COMMISSIONER DAVIDSON: Well, I
9 definitely appreciate your testimony and what
10 we're trying to set out and do. Definitely
11 working with the states is very important with
12 us and we do approach your being here. We know
13 it's close to the election, and thank you, very
14 much.
15 VICE-CHAIR HILLMAN: Thank you all
16 for being here, for your presentations. I have
17 a question that I'd like each of you to answer,
18 that is, who do you find yourself most
19 frequently discussing testing and certification
20 of the voting systems that you do?
21 MS. MCGEEHAN: Who do we discuss it
22 with?

1 VICE-CHAIR HILLMAN: Yes, who do you
2 most frequently find is asking you questions
3 that you're talking to, who cares, other than
4 you?
5 MS. MCGEEHAN: Well, certainly, the
6 local election authorities, as they struggle to
7 do it, and for many of them coming from a paper
8 ballot system, we had counties that still hand
9 counted paper ballots. So for many
10 jurisdictions, many of them are struggling with
11 that, struggling with the fact that it is a
12 public test. And even though like Sandy and
13 Alice said, sometimes a lot of people don't show
14 up, sometimes they do, just struggling with how
15 to set that up in a public framework, yet also
pay attention to all these pages of details that you have to attend to make sure the tests come out right. So I would say it's mostly the local election officials that I spend my time talking to on that issue.

VICE-CHAIR HILLMAN: State regulators, county officials, people in the administration, advocacy groups, legal defense groups.

MS. MILLER: I think it certainly helps build confidence in the process if you can describe these tests are taking place, but as far as the detailed discussions on how to do these tests, generally, it is just the local election officials that want to get into that level of detail.

MS. STEINBACH: We also have a couple of advocacy groups that have shown a detailed interest in our testing procedures. When they were published for public comment, they were quite pleased with the detail that they found in our test requirements. And I frankly admit I was relieved to have their support on the detail that we provided in our test climates.

MS. MILLER: When we have our public testing, I find that conversation taking place with candidates who are there that may be interested, wanting to make certain that the information, the vote tally is doing what it's supposed to do. A lot of candidates, as you mentioned, advocates as well, and from time to time, some of the legislators, but not unless they are running for election.

VICE-CHAIR HILLMAN: It's becoming feeling a bit insecure about voting systems don't really know the processes that are in
place, beginning with the national testing and certificate of the systems, through to the chain of custody and other security responsibilities that elections officials have, and how it gets transferred to the local. And while we certainly wouldn't expect voters to have to get into the details and nuances of this, we certainly would hope that academics and advocacy groups, but in particular, legislators.

And I am most curious to know whether you have any kind of program initiative, any experience, with trying to get state legislators, county officials, any other groups of elected or other public officials, to really appreciate what all is involved in this process.

MS. MCGEEHAN: Well, I can tell you we work closely with our house elections committee. This advisory that I referenced earlier, what we intend to do is bring that to that body when they convene in January and ask them to adopt that into state law. They are interested in that. In our state, like many states, we're having discussion on whether there should be a voter verified paper audit trail. And so you have to look at those issues together, all the testing, logic and accuracy testing. That's all part of it. The paper received is one part of the process that builds confidence, so they go together. So we're having those kinds of discussions.

MS. STEINBACH: We're not, in Iowa.

MS. MILLER: The only time it comes up in D.C. is when we go for budget hearings. There may be conversation about it. There is not any detail. There is the committee on Government operations which is the committee that oversees the elections process, but it is not as involved at it needs to be. And you are
absolutely right, they do not understand the 
process, they do not understand what goes into 
making sure that the systems are certified 
before we get to Election Day. So there is not 
a lot of conversation, but when it does come up, 
it's actually right around budget time.

VICE-CHAIR HILLMAN: One of the 
frustrating things that the EAC has is, because 
of our small budget and small staff, we don't 
have the capacity for rapid response. So when 
we see a need for conversation, we aren't always 
able to turn it around as quickly as we'd like 
to, to help inform the public and others about 
what's going on, particularly in direct response 
to issues and concerns that are raised. But we 
have recently, just probably today, hot off the 
press, a Voters Guide To Election Day, and we're 
trying to find the ways that we can assure the 
public that there are safety components in 
place, ways that they can relate to and say, 

okay, I get it, and it works.

So I would just ask you that in the 
course of this election, that you think about 
the kinds of criticisms and observations that 
are being raised through the press, and any 
kinds of questions that you might get from 
voters or groups representing voters, that you 
would let us know ways that we can help inform 
and educate the public that the business of 
administering elections is complex and there are 
some components to it. It's not just going to 
Best Buy, buying a voting system, fire it up on 
Election Day and say, here, you go, let's vote, 
but that it is much more complex, and that some 
of the scares that voters have received are sort 
of a disservice because there is a lot that goes 
into this. Any response, I'd appreciate. Thank 
you.

MS. HODGKINS: Thank you, Mr.
Chairman. I just wanted to take the opportunity to thank all three of you for your comments. It is, obviously, vitally important to you that you and all of your colleagues buy into this program and use it.

I also wanted to take the opportunity, specifically, to thank Sandy Steinbach, as she has been an invaluable resource to our staff as we put this program together.

DIRECTOR WILKEY: Thank you, Mr. Chairman. It's always good to have three of my former colleagues around. It makes me feel homesick, and to have my new election director here today assures me that my vote is going to count on Election Day.

MS. MILLER: Absolutely.

DIRECTOR WILKEY: One of the most disconcerting things, when you're looking from this level, is that we've got so much media going on out there about breakdowns of voting machines. Unfortunately, we're not near the ability to be able to track the number of anomalies and take the wheat from the chaff, and say this is human error or this is actually a machine breakdown. Because we have thousands of pieces of equipment in use on Election Day.

This program isn't going to work unless we're able to do that, and we're able to have cooperation from the states and local jurisdictions in tracking anomalies, what is real, and maybe perhaps what is not real.

And I'd like to ask you, do you think it's possible for states, in addition to being legislators, to adopt the program, to also take a look at requiring in some way local jurisdictions to report this kind of
information. Because on a voluntary
information, I'm afraid it's not going to be the
level that we need in order to do a couple
things to make this program work, to be able to
track real problems, but also to assure the
American public that, yes, real problems, but
their percentage was human related. We made a
mistake punching the wrong button. This was a
real problem with the voting system.

Is that something that you think my
former association would be interested in doing?
Can it work here?

MS. STEINBACH: In theory, of course,
it can work. One of the difficulties is the
intricacy of the election system itself. It's
run by thousands of local officials, many of
whom are elected officials who are somewhat
reluctant when they make mistakes to report them
beyond where they need to. In order for this to
work, we need to have the confidence of the
local officials that what they report will not
be used in any way in political campaign against
them, and will only be used to benefit voters in
the election process.

It's a fragile relationship that we
have with all of the people who put this whole
thing together. Elections don't just happen.
We have lots of people involved, and many of
them work only on Election Days and don't
necessarily understand all of the nuances of the
problem. So we need to work on that, and it's
something that we need to discuss, but

theoretically, it's a wonderful idea.

I just think it's going to take a lot
of work, and a lot of trust, and building trust
is something that takes time.

MS. MCGEEHAN: I would say that I'm
starting, because of all the public scrutiny on
the entire election process. I know that our office receives calls from jurisdictions that maybe wouldn't have called us in the past, but they know that the press is going to find out about it anyway, and so it's in everybody's interest to lay their cards on the table. Again, trying to set a uniform kind of administrative process, I know we could do that in Texas where we could adopt a rule that required that reporting of malfunctioning machines to us. I hear what you're saying, Sandy. There is a lot of truth there too, but I think the timing is good right now for something like that. I think there's a lot of promise to that.

MS. MILLER: Yes. You don't have to worry with me, but we do document ourselves everything that we know about, and we have that on file. It is such a people process though, unless you don't know everything that goes on on Election Day, it's impossible to fill it out. We try to go back and recap it based on the information, the phone calls that we get on Election Day. And then what we hear, what we read from our poll workers, what they have written down. And they don't write everything down. They only write what they want you to know, and we can sometimes read in between the lines a little bit more happened than what they are revealing. You have to keep in mind, Sandy, folks are scared about letting you know what happened. It is a very public process, and that it's a people process, and people make mistakes. They don't want their mistakes to be out there in the public form.

DIRECTOR WILKEY: Thank you. I know the old expression, "The truth will set you free." We find that the number of problems
1 reported are far from being accurate.
2 Thank you. And I particularly want to thank
3 Sandy Steinbach. I know you had some family
4 concerns, and I appreciate you being with us.
5 Thank you, Mr. Chairman.
6             CHAIRMAN DEGREGORIO: We certainly
7 appreciate the testimony of the three of you.
8 Ms. Miller, I mentioned your leadership in 2004,
9 making sure you had the devices at the polling
10 places for people with disabilities, and he
11 happened to join us during your testimony.
12 Mr. Dixon, American Association of People with
13 Disabilities. Jim, I mentioned the fact of you
14 having the ability to vote in the District of
15 Columbia privately and independently for the
16 first time.
17             MS. MILLER: That, Jim, keeps me
18 honest.
19             CHAIRMAN DEGREGORIO: Thank you,
20 ladies. And we will start our ask our next
21 panel to come forward.
22             Our next panel consists of two
23 distinguished gentlemen who follow the process
24 of voting devices, certification of voting
25 systems, very closely in different roles that
26 they serve, but our first speaker, Michael
27 Shamos, is someone that has distinguished
28 himself in this area. He is a faculty member of
29 the School of Computer Science, Carnegie Mellon
30 University, since 1975, also an attorney
31 dedicated to practice in Pennsylvania, and also
32 United States Patent Office. From 1988 to 2000,
33 Mr. Shamos was statutory examiner of electronic
34 voter systems, Secretary of Commonwealth of
35 Pennsylvania, to aid in voting system
36 examination during those two years. He
37 participated in every electronic voting system
38 examination held during those 13 years. In all,
he has personally examined over a hundred
different voting systems, participated in
certification, counting 11 percent of the
popular votes in the 2000 election. And
Mr. Shamos has testified before Congress in the
field of election system certificate.

Warren Stewart is someone that has
been very active in examining systems that were
used for voting in the United States. He is the
policy director of VotaRist, USA, provides
advice to state level organizations across the
country. Mr. Stewart has worked in researching
and since 2004 New Mexico. He had VotaRist USA
weekly newsletter, which I know I receive.
Mr. Stewart, Mr. Shamos, thank you
for coming today. Mr. Shamos, we will start
with you.

MR. SHAMOS: Thank you, Mr. Chairman.
I certainly appreciate the opportunity to
testify today, although I understand that the
content of my testimony might be somewhat
unexpected.
In testimony before the House of
representatives on science in June, 2004, I
offered the opinion that, quote, "The system we
have for testing and certifying voting equipment
in this country is not only broken, but is
virtually nonexistent. It must be recreated
from scratch or we will never restore public
confidence in elections. I believe that the
process of designing, implementing,
manufacturing, certifying, selling, acquiring,
storing, using, testing, and even discarding
voting machines must be transparent from cradle
to grave, and must adhere to strict performance
and security guidelines that should be uniform
for federal elections through the United
States."
Not only do I still hold that view, but election events over the past two years have convinced me even more that it is the correct one.

As a state examiner, I often feel like a pathologist, my examination table littered with the dead bodies of voting systems that passed federal testing but failed at the state level. The average pass rate for federally qualified voting systems in Pennsylvania is approximately 50 percent, when it should be well over 90 percent, and I often ask aloud during examinations how a particular flaw could possibly have gotten past an ITA. But my question is rhetorical, for I cannot find out. Even when I see an ITA qualification report, whether the system passed them or not, but no information on how the tests were conducted, how close the system came to failing, or how many times a test had to be performed for the system to pass.

For me, the overriding purpose of federal testing is to relieve the states of the burden of testing to the voting system guidelines. For the states to disband their own testing procedures and place reliance on federal laboratories creates a profound obligation on those laboratories to conduct testing in a way that can be fully trusted upon by the states and the voters. Right now, we cannot rely on the ITA process, and codifying it into a set of federal regulations will not bring the sea change that is necessary.

I find it instructive that in the history of the ITA system, no system ever failed qualification. Instead of a pass/fail system, the only options as pass and hasn't passed yet.
There is no feedback to the public at all on what, if anything, is flawed about the systems that have been tested. This structure is retained in the current draft manual, which does not even contain the word failure.

My chief criticism of the draft manual is that it legitimizes by specifying in great detail a system that has proven not to meet the critical needs of either the states or the voters. Section 1.4.4 of the draft manual states that a purpose of the EAC certification program is to, "increase voter confidence in the use of voting systems." That will not happen if the EAC simply takes over management of the current ITA mechanism.

THE VSTL Process. The responsibilities of the EAC with respect to accrediting testing laboratories are set forth entirely in Section 231 of HAVA. Unfortunately, HAVA is silent on the fundamental purpose of the accreditation program or even of the Voluntary Voting System Guidelines that serve as the basis for laboratory testing.

It is the express intent of HAVA that states will choose to rely on the outcome of federal laboratory testing in deciding whether to certify voting systems in their respective states. I would be irresponsible for a state to repose such trust in a laboratory if it had no independent means to verify or validate what the laboratory is doing.

The fundamental problem with federal testing the VVSG is a built-in lack of transparency. The laboratories are paid by the manufacturers seeking certification, and they answer to the manufacturers. They have no other perceived responsibility other than to retain their accreditation. They have no defined duty to the public, or even to the states that rely
The problem is not a lack of qualified laboratories. The problem is the entire architecture of the VSTL system, which must be rebuilt brick by brick, with due attention to the public's interest in a completely open process. The manual does not address how a VSTL is to be chosen to examine a particular system, how it is to be paid, and to whom it owes responsibility. This choice of VSTL should not be made by the manufacturer, since this encourage gaming the system, but should be made by the EAC, preferably on a random basis. The VSTL should not be paid by the manufacturer, but by the EAC. The EAC can ultimately recover costs from the manufacturer. The immediate consumer of a certification report is the EAC, which is answerable to the public. The secondary consumers are the states and the public, but the public never get to see what the EAC and state officials are relying upon. The draft manual states that is is a comprehensive presentation of the EAC Voting System Testing and Certification Program, and is intended to establish all of the program requirements. Yet, the process by which a laboratory is engaged and paid by a manufacturer is never mentioned, nor is there any provision for audit that process. The manual imposes conflict of interest restrictions on EAC employees, but says nothing about conflicts involving manufacturers and laboratories. It contains no code of ethics, nor even an overall statement of ethical guidelines. The manual is entirely too solicitous of the supposed trade secrets of the manufacturers. My belief is that any company
wanting to enter the voting system business must check his trade secrets at the door. As long as the code in voting system remains secret, the public will never trust it, nor should it. But regardless whether code should be secret or not, the tests performed by the VSTLs and their results and reports should certainly not be.

In Pennsylvania, every aspect of the examination process is open. The public attends the examinations. They are recorded on videotape, and the reports and videotapes are made public. Even that does not stop criticism of the process, but at least it cannot be faulted for secrecy. If a state can make its examination open, so can a VSTL.

In an effort to be constructive, and not merely to complain, in my written testimony I have provided detailed comments on the draft manual. However, the problem here is not in the details, but in the overall architecture of the system, for which I urge a significant redesign.

I thank you for the opportunity to address the Commission here today.

CHAIRMAN DEGREGORIO: I appreciate your comments. I know you testified before, and we appreciate your constructive comments. We’ll have questions too. I do appreciate that.

Mr. Stewart.

MR. STEWART: Thank you. I want to sincerely thank the Commission for inviting me as a representative of VotaRist USA to address you today. VotaRist USA is a nonpartisan, national network serving state and local election integrity organizations and citizens concerned about the accuracy, accessibility, and integrity of our elections. The Declaration of
Independence boldly asserts, "Governments derive their just powers from the consent of the governed," is transferred from the people to those in power is the ballot box. Transparency is fundamental to democratic governance, and a transparent election process demands public oversight.

We are pleased that the Commission is establishing a new testing and certification regime and the proposed program shows some movement toward transparency and public oversight. Test reports and technical data packages will be public, though redacted. Procedures for decertification and for investigations have been established, as well as a quality management process for the collection of data about anomalies and malfunctioning equipment, through limited, unfortunately, to reports from election officials and manufacturers, parties with a vested interest in hiding such information. The inclusion of NVLAP in the accreditation of testing labs in audit and review is a positive development as well, as long as robust guidelines and practices are developed.

Overall, however, the proposed program, like the one it is replacing, is too deferential to the interests of the manufacturers while inadequately reflecting the interest of the primary stakeholders in the election process, the voters.

Nearly all distrust of election machinery rests on the lack of transparency of the software used to administer elections. How does this software convert screen touches or marks on paper to votes for a particular candidate? How does this software record and tally those votes? How does an election
2 official determine whether the actual behavior
3 of the software is the correct behavior?
4 The answers to these questions and
5 many more like them are hidden by nondisclosure
6 contracts and the manufacturers' assertion that
7 details of how their machinery administers
8 elections are trade secrets. Whether or not it
9 is reasonable to keep the means of administering
10 elections secret in a democracy, the trade
11 secret construct is already breaking down.
12 State law in North Carolina already
13 mandates public disclosure of voting system
14 software. Three of the four major vendors have
15 stated publicly that they would meet software
16 disclosure requirements of legislation proposed
17 in California, and a bill that would require
18 software disclose nationwide enjoys the
19 co-sponsorship of a majority of members of the
20 U.S. House of Representatives.
21 But the Commission does not have to
22 wait for legislative action. The Commission
23 should simply change the Appendix A application
24 to require, as a condition of registration, that
25 manufacturers agree to disclose all evidence
26 supporting the merchantability or fitness of use
27 for systems to administer elections, and the
28 information needed to identify a system.
29 The imperative of transparency
30 extends to the testing labs as well. The
31 Commission has delegated its testing authority
32 under HAVA to private labs without requiring, or
33 even allowing for, public oversight of those
34 labs. However, democracy requires that those
35 who are tasked with the responsibilities of
36 government be accountable to the public. As a
37 condition of registration, Appendix B should
38 require that the testing labs agree to make
39 their methods, work and results transparent
40 through public disclosure to the Commission. At
the very least, those materials that the Commission does demand of the testing labs should be delivered directly to the Commission by the labs and not through the manufacturers.

While the new requirement for NVLAP accreditation is to be applauded, under the proposed system, the testing labs are under no minimum performance or methodology requirements. It is hoped that the EAC will soon communicate to NIST what these additional testing requirements are, and the specific testing practices to be performed. I would recommend a careful reading of the independent review of Ciber's master test plan recently conducted for the New York State Board of Elections.

The Commission should also open the testing effort to independent security experts. In the rare cases where independent experts have been able to gain access to source code, they have invariably discovered reliability and security problems. While this may be uncomfortable for manufactures, exposing these flaws is clearly in the public interest.

Similarly, the Commission could sponsor expert usability/accessibility testing to ensure that certified voting systems intended to meet Section 301(a)(3) actually do allow disabled Americans to vote privately and independently. Rather than merely performing the functionality testing required for certification, additional testing could serve to improve and refine the subsequent versions of the VVSG. At the least, independent security experts, for example, be involved in developing test suites, reviewing test plans and reports.

Finally, the draft manual is lacking any exercise of the authority granted to the EAC...
under HAVA, Section 231. Nowhere is there a penalty clause for any violation of phrases like the manufacturer shall, or the manufacturer shall not. What is the penalty if a manufacturer represents a system as certified when it is not? What happens when a system certified under the emergency rules is not later submitted for proper certification? The EAC could tie penalty statements for both manufacturers and test labs to suspension of registration and decertify all systems from suspended manufacturers.

The current crisis of confidence in the electoral process demands bold actions from the EAC, bold actions that Congress mandated the EAC to take. VotaRist, USA, the national organizations with whom we work in coalition, and the state and local election integrity groups that we serve, are eager to work together to support the EAC in establishing a transparent and reliable election process that deserves the full confidence of American voters. Citizen advocates should be informed and involved to the greatest degree possible in this process.

Thank you, very much.

CHAIRMAN DEGREGORIO: Thank you, Mr. Stewart.

Comments, and I will turn to my colleagues. Commissioner Hillman.

VICE-CHAIR HILLMAN: Thank you, gentlemen. Let me pose my first set of questions to Mr. Shamos. I want to get a couple clarifications from your testimony. Could you define for me what you mean by federal testing? You say in your presentation that your table is littered with the dead bodies of voting systems that passed federal test. And I want to know what you mean by federal testing?
MR. SHAMOS: Currently, ITA testing to federal standards by an accredited laboratory. And there is a requirement in Pennsylvania, a system will not be tested for certification unless it has a certification letter from a federally qualified lab. So Pennsylvania has adopted the federal standards and not the entire NASED process.

VICE-CHAIR HILLMAN: So you are suggesting that even though it was not a federal agency that was accrediting the labs or doing the certification, that if a system was tested against federal standards, it is, quote, "federally tested?"

MR. SHAMOS: No. In Pennsylvania, only the NASED qualified labs are accepted as being capable of issues a certification.

VICE-CHAIR HILLMAN: Right. You call NASED a federal testing?

MR. SHAMOS: It's not performed by a federal agency.

VICE-CHAIR HILLMAN: That is what I was asking. Irrespective of who is doing the testing, what you're saying is that means it is federally tested?

MR. SHAMOS: In that comment, we're talking about the past because I don't know what's going to happen in the future. In the past, all of the testing since 2000, all of the systems submitted for certification in Pennsylvania had to have satisfied the FEC standards as tested to by one of the NASED level. That was the meaning of testing.

VICE-CHAIR HILLMAN: You then talk about that these federally qualified systems. I'm not sure I agree with what you mean by federally qualified is approximately 50 percent, when it should have been well over 90 percent. You aren't specific about what things didn't
pass, so could you be more specific now, share
with us some specifics?

MR. SHAMOS: Yes. It's my preference
not to mention vendors specifically by name
because I would have to go back to my
examination reports and make sure that
everything I was saying would be totally
accurate.

However, the examinations that I
performed in Pennsylvania physically last
somewhere between six and nine hours. It is
rare for a system -- remember, all of these are
definitely qualified, according to that
definition. It is rare for a system not to
begin to exhibit problems within the first half
hour, not necessarily debilitating, that would
result in failure of the examination, but most
often I am talking about problems not related to
specific changes in Pennsylvania law. That is
not tested to by the federal lab. I'm talking
about stuff that was generic to the operation of
the system.

We, typically, go through every menu
option in every menu in the election management
system. The numbers of items in which a hundred
percent of the menu options worked correctly is
nearly zero. Now, that doesn't mean that they
wouldn't necessarily pass Pennsylvania
certification because of the nature of the
error, but in 50 percent of the cases, it turned
out its been zero, they wouldn't pass muster
under Pennsylvania law.

VICE-CHAIR HILLMAN: You say you have
done these examinations for other states. Is
that the same in other states where you have
done examinations?

MR. SHAMOS: I have done examinations
for six states. By far, the bulk of the
stations were for Pennsylvania and Texas. Texas
pass rate -- remember, my testing in Texas ended
in 2000, and so we didn't have the 2002
standards at that time the pass rate in Texas
was lower because of the general nature of the
way Texas does things. Individual counties were
allowed to build their own voting systems. They
didn't actually have to buy one from a
manufacturer, so the variety of things we saw in
Texas was so great that the failure rate was
high, but they were not tested to federal tall
standards.

VICE-CHAIR HILLMAN: You used the
term, federal laboratories. What is a federal
laboratory?

MR. SHAMOS: Okay. So there is a
vernacular in the voting system business. There
is a term, federally qualified. The best way to
understand is NASED certified. So it has passed
testing to federal standards by a laboratory
that was qualified by NASED.

VICE-CHAIR HILLMAN: But NASED's not
federal, so I don't understand what you mean by
federal.

MR. SHAMOS: We will change the
terminology and say NASED qualified.

VICE-CHAIR HILLMAN: Well, I think
that's really important because the suggestion,
if someone were to in isolation from this
meeting, pick this up, they would think that, in
fact, the Federal Government had accredited the
laboratories. And since the EAC has just
started this responsibility, that hadn't
happened yet.

MR. SHAMOS: We're talking about
historical use of terminology. It is in common
use to say the system is federally qualified.
VICE-CHAIR HILLMAN: There is one place where I take exception with you. There is a place in the voting process where secrecy and voting do mix, and that is the secrecy of the ballot.

MR. SHAMOS: Guilty as charged.

VICE-CHAIR HILLMAN: Question for you, Mr. Stewart, thank you for being with us. In your testimony, you talked about the public's increasing scrutiny of the election process at the time when a process is becoming increasingly hidden from view. Since I have been on this Commission, which has been since Day 1, we have tried our best to be as transparent as we can about everything we're doing. So I certainly could benefit if you would further elaborate on your comment.

MR. STEWART: Actually, that comment was in the written testimony speaking of a historical trend since the foundation of the country. We went from a system where there was no secrecy where you held your hand up in the public street, to secret, where we started using mechanical machines which created one level of what I call the enclosure of transparency, and that is just furnished by the software.

I recognize that what you are attempting to do here is actually attempting to reverse that process. I just want you to reverse it more.

VICE-CHAIR HILLMAN: Well, you gave it a historical context, which I wasn't thinking. I thought your comment was in the context of the lab accreditation.

MR. STEWART: That's why I didn't include it in my oral testimony here.
your written testimony is for the record, so I
want to make sure the record is very accurate
and complete about this. Some of the things you
described are some things that America voters,
they don't want to necessarily stand up in the
polling place in front of several hundred people
and say who I am voting for.

Now, the bold action that Congress
has mandated EAC to take, could you be specific
about what you think those bold actions are?

MR. STEWART: Well, in general, restoring voter confidence. I know you are
working on that. The context I used for that, I believe --

VICE-CHAIR HILLMAN: You said crisis
of confidence in elections.

MR. STEWART: What I was talking
about with transparency, just go ahead and
require that all this material become public
information. Don't wait for the legislature to
act to make that requirement. You have the
power within Section 231 to simply say that if
you want to play in this area, public comment of
election administration, you're going to have to
make that information available. And I think
that the way that trade secrets are treated in
Section 10 is too differential to the commercial
interests really of the vendors. As one of the
erlier panelists mentioned, the trade secrets
confidential provision sort of covers
everything. It is blanket statements to take
everything out of public view, and I'm not sure
that's necessarily all because of trade secrets.
Some of that information might be commercially
damaging to the vendor, and I think that you
should not in the business of protecting the
vendor's commercial interests. You should be
working for the public interest.

VICE-CHAIR HILLMAN: Do you have
anything specific? I know you qualified it might be commercially damaging. Do you have anything that would suggest that, in fact, that is why?

MR. STEWART: Once again, I don't want to talk about specific vendors either, but kind of independent reviews that have been done by academic institutions or by computer security efforts, I'm sure have been damaging to the reputations of vendors because they have uncovered severe security vulnerabilities that don't look good for the vendor. That's the kind of thing that I feel is being covered.

VICE-CHAIR HILLMAN: Final question, is there anything about the proposed testing and certification program that resonates that you think is good.

MR. STEWART: Absolutely, and I said that at the beginning -- I apologize, I was brought here to express these concerns. Plenty of people today have been saying what's good about this. I am particularly pleased that there is a process now for collecting data because that's something to a great extent that is acting as a clearinghouse for this kind of information is very important. You are overworked and understaffed, but it is the kind of thing that organizations that I work with have been trying to pick up the slack on keeping track of that. We don't have access to election officials the way the EAC will. We have been trying to keep track of that information. We're completely understaffed, and not funded at all. So we're pleased that you are taking on those responsibilities.

And to the extent that information is going to be part of the public record, the fact that documents are going to be written,
14 documents are going to be required and test data
15 packages and test results, to the extent that
16 that's going to be public information, we're
17 very, very pleased with that. We just want you
18 to make more of that available.
19 VICE-CHAIR HILLMAN: Dr. Shamos, I
20 know you said this thing is so badly broken, it
21 needs to start all over again, but is there
22 anything in the current draft that you think is
23 worth building on?
24 MR. SHAMOS: Yes. What I meant when
25 I said that the system is broken, is it's not at
26 a stage where states can meaningfully rely on
27 the results of the testing process. The reason
28 I know that is I look at these systems that have
29 passed through the testing process, and they
30 immediately fail. So something's wrong
31 somewhere. I can't point the finger where it
32 might be because it is not okay. I think there
33 are probably a half dozen changes, if you let me
34 change half a dozen tenses in the manual, the
35 manual would get a lot better. It's not that
36 you have to throw the whole book out. A lot of
37 the processes reveals an appeal that's all fine.
38 It is the fundamental philosophies stated in the
39 manual that really have to be implemented.
40 VICE-CHAIR HILLMAN: And I know that
41 we will get those half dozen comments in writing
42 before the end of the month.
43 MR. SHAMOS: Yes.
44 MR. STEWART: Commissioners, would it
45 be out of order slightly, there were a couple
46 questions that you asked of earlier panelists
47 which I would love to have the opportunity to
48 give my perspective on at some point.
49 CHAIRMAN DEGREGORIO: We will give
50 you that, but let's go to Commissioner Davidson.
COMMISSIONER DAVIDSON: Mr. Stewart, you talked about one of the really interesting things that I wanted to ask you at the very end of your testimony to Commissioner Hillman.

We're aware that you did a lot of studies investigating issues related to problems in the election concerning voting systems. I see percentages attributed from your organization concerning these malfunctions or possible problems with the election equipment.

I'm wondering how did your organization arrive at those figures, and the methodology behind your conclusions. Did the work involve any election officials at all or was it just press?

MR. STEWART: I'd have to know specifically what you were speaking of. So I can't say because I don't know exactly what numbers you're talking about. Remember that we're a bit of an ad hoc organization. We exist because there are American citizens in counties and states across the country concerned about the accuracy and integrity of elections, and are working devoting on an entirely volunteer basis, taking time out of their life because they are concerned about elections, they are concerned about democracy.

So there is going to be some variation amongst the kind of reports that are done. I try not to publish anything that I don't feel pretty confident about. That's sort of one level where they come from. But then I also repost studies from academic sources. We have a technical voting systems advisory board that includes people that are actually software testers that are involved, and in those cases, I am relying on their technical skills. So I don't know if I could mention something...
COMMISSIONER DAVIDSON: One of the questions I have is whether or not it is actually a machine problem or was it an individual that was not following the procedure. Elections, as we said, well, millions of people are involved. Did you look into it at all to see if it was a problem because of error or is it actually a machine issue?

MR. STEWART: Of course, I agree with you completely, because there is the human element in the election process, especially when you are dealing with technology, in general, high tech, and then new technology, especially. So, once again, I have to go on a case by case basis.

We have tried to supplement the poll worker training by providing resources specific to machine issues to poll workers through various outlets. I also work as a legislative advocate. We're always trying to get more funding for poll workers and for that kind of education.

COMMISSIONER DAVIDSON: This is a side note, but do you also have any of your organization members -- you have got great people. They understand elections. Do you ask them to sign up as poll workers?

MR. STEWART: Absolutely. We're part of a sponsor for an effort called Poll workers For Democracy, which has already signed up more than 5,000 poll workers. They are official poll workers. They are going through their county's training, but we're trying to provide them with additional resources specific to the technology they are using, making sure they know how they can report issues that come up.

I have been a poll worker, and I have tried to find things out on Election Day, and I can't get through to my county official. Just
18 give me resources. We want to have smooth
elections. We want to work together as much as
possible.

21 You mentioned earlier about reaching
22 out to election officials. We are a relatively
young organization. I have been talking people
about getting more of a relationship with
election officials. I try to develop
relationships with secretaries of state. I have
had a certain hurdle to get over of
defensiveness or, oh, I am going to be one of
those people who is going to try to ruin my
career.

9 If I'm here, this must be testimony
to the fact that I have succeeded to some extent
in conveying the notion that our object here is
to help you make elections better, to help to
work with election officials in achieving the
sort of transparency, oversight, and public
confidence that we feel is still lacking,
despite the efforts made in that direction.

17 COMMISSIONER DAVIDSON: Thank you.
18 Appreciate it. We do appreciate your
19 involvement.

20 I think Mr. Shamos, we heard about
21 several of the issues that you feel like,
22 especially how we could collect the money here

1 at the EAC and pay for the testing. Right now,
2 obviously, our attorneys tell us we can't do
3 that by federal law. And we don't have
4 authority by Congress, and we wouldn't have that
5 for a while, even if we made that cry and they
6 would pass that.

7 Recognizing that they haven't passed
8 it for other entities, and they are in the same
9 position, what suggestion do you have for us to
10 make the process better without being able to
collect the money?
Is there an idea that you have that you can share with us, because we hear this a lot. We were very interested in it, so we did a lot of research. Do you have other ideas for us?

MR. SHAMOS: Sure. Basically, what it says when a federal agency collects money, it has to deposit it into the treasury of the states. When it goes back, you can't get it back unless Congress allocates it to you. One way to do it is -- simple, legal way, is pay the laboratories out of your budget. Then when you collect the money from the laboratories and pay it into the treasury, you go in and inform your legislators you see we spent four million dollars on testing, but we brought in four million dollars in receipts, so why don't you bump up our allocation for next year. See, we can cover it.

COMMISSIONER DAVIDSON: We need to go back in our supplemental on this.

MR. SHAMOS: Here's another solution. Go back and get a technical -- correction. I need to say to HAVA there is a visceral reaction to Congress to that, but you get a correction that puts you in the position of being like the patent office which can collect its own fees and run its own operations.

Third, would be you have somebody create a nonprofit organization, and you impose a requirement for the a vendor or manufacturer. And when a manufacturer wants to be examined, he pays into this nonprofit organization what the examination fee is going to be, and the trustees of the nonprofit organization pay the vendor, pay the vestal. And the decision of which vestal to use is made by the EAC on either some
COMMISSIONER DAVIDSON: My last question to you, when we were reviewing and going through your testimony, I guess there was issues that obviously we felt that was a little heavier than we looked at. Fifty percent of the equipment you tested, you said, didn't pass. At the time, you recognized there was a problem. Did you go back to the committee with NASED and comment to them of the issues that you felt was really a problem at that time?

MR. SHAMOS: Over the years, I have occasionally had conversations with people from NASED, but everything that we're doing at the Pennsylvania level is completely public. We have a rule in Pennsylvania since 1980 that once a system is submitted for examination, it cannot be withdrawn. So if the vendor believes that it's going to fail, he can't avert the failure by saying, there, there, let's stop this. I'd rather go home.

And so furthermore, the reports of the failures are just as public as those of the successes. So anybody who is watching can easily go back and see what the pass rate has been for these systems over the years for any particular year. And so I think it's well known by the public and the vendors what's passing and what's not passing, but no, I haven't had a conversation directly with NASED on how to fix it.

COMMISSIONER DAVIDSON: And when they fail, were they allowed to have come back in for recertification?

MR. SHAMOS: Certainly. The problem is, if they fail, they can't ask for a retest.

What they have to show is that they have made
some change to the system that would correct whatever it was that failed. Then they can come back for a retest. As long as they keep making changes and pay the fee for the retest, also, no limit. Meanwhile, they are not certified.

**COMMISSIONER DAVIDSON:** In other words, it's like starting over.

**MR. SHAMOS:** It's like starting over, except in the sense we're already familiar with the system. We know how it's supposed to work, we can get to the heart of the matter.

**COMMISSIONER DAVIDSON:** Thank you so much for being here with us today.

**CHAIRMAN DEGREGORIO:** Dr. Shamos, my colleague, Commissioner Hillman, I thought raised an excellent point in characterization of the federal testing, because I think it's important we get questioned. Certainly, I do, as the chairman, from the media, about this previous federal certification of equipment.

And I have to go and explain it is a NASED certification, but it is not a Federal Government certification, this program, there is no question about it. You are familiar with the NVLAP program of NIST?

**MR. SHAMOS:** Not much. I heard about it in testimony today, but let me draw an important distinction.

**CHAIRMAN DEGREGORIO:** Sure.

**MR. SHAMOS:** An analogy was sited in several cases to FCC testing, FAA testing, etc and I think the analogy is not applicable, and the reason for that is, if I have a particular fear of a telephone, I don't have to use that particular telephone. I can go buy a different phone. If I think that flying is unsafe, I don't have to fly, I can drive. But I don't
I think standards undoubtedly applies, and I am very impressed with my interactions with NIST. I testified two years ago, if you read between the lines, that I didn't think NIST had what was needed fulfil their responsibility under HAVA, because they had no personal experience in voting systems. Since then, NIST has undertaken its responsibility, and I have been working very closely with them. And so I have confidence that at least the principles of laboratory qualification, even though I am not personally familiar with them, just based on the way NIST is conducting itself, I am sure they are going to be fine.

I have no company. I am not accredited by anybody.

Chairman Degregorio: So you do this on your own without any other accreditation by anybody, but you make these pronouncements without any kind of somebody checking your work. Yes or no, is that true?

Mr. Shamos: The answer is yes, with explanation. Yes, I am not accredited. However, I was not born into the position. I applied to be an examiner in Pennsylvania in 1980. My qualifications were reviewed by the Secretary of the Commonwealth. And I served at the pleasure of the Secretary of the Commonwealth. I am now a consultant to the
9 Secretary of the Commonwealth, but still serve
10 at it's pleasure. So if I do anything wrong,
11 I'm gone.
12 When you say my work is not subject
13 to review by anyone, that is not correct. I do
14 an examination which is entirely public,
15 videotaped from beginning to end, and those
16 videotapes are public. The result of this is
17 that I write a report with recommendations to
18 the Secretary of Commonwealth. It is reviewed
19 by the commissioner of elections, the Council's
20 Office for the Secretary, which pass on my
21 report to the Secretary with a recommendation of
22 he is all wet or we really think you ought to go
217
1 along with this. If you ask am I personally a
2 accredited, no, but I don't work under a rock.
3 I work in a tremendously public forum. And you
4 can see every minute of every examination I have
5 performed in Pennsylvania since 1980.
6 CHAIRMAN DEGREGORIO: I appreciate
7 that, but I do understand that you have examined
8 background of the laboratories, and I know that
9 they provide great service to the country by
10 examining products. They certainly invest
11 millions of dollars in their testing procedure.
12 Do you get to examine the source code?
13 MR. SHAMOS: The question is that I
14 examine the source code, but I don't examine the
15 source code during the public examination.
16 CHAIRMAN DEGREGORIO: Wait. Now, I
17 need a lawyer to help me through that.
18 MR. SHAMOS: There is no way around
19 it. I have been kicking and screaming about
20 this for years. The current process is that the
21 vendors don't want their source code exposed,
22 and for reasons known bet.
MR. SHAMOS: Yes. For reasons known better to the Secretary of the Commonwealth than to me, he has not chosen to make the source code public. I conduct an examination of the source code, not at the level that the ITAs are supposed to.

I don't do a full code read. What I do is when I find something about the system that suggests there might be some kind of a problem, I am able to go to the source code and see if the problem resides there. So I would characterize my looking at the source code as perfunctory.

CHAIRMAN DEGREGORIO: You're saying every aspect of the examination process is open. I have queried you on this. I am not coming to the same conclusion you are.

MR. SHAMOS: I will agree there is a semantic difference as to what occurs physically during the public examination and the things I get to look at privately, which I deeply regret.

CHAIRMAN DEGREGORIO: When you worked in Pennsylvania and Texas, did the state ever pay a testing lab, independent testing lab, to test their voting equipment? Any state funds as opposed to the manufacturer, is that ever done?

MR. SHAMOS: It was not done in Texas or Pennsylvania, but it's been done in Maryland.

CHAIRMAN DEGREGORIO: I know that you also provided specific comments on specific sections of our program and we certainly appreciate that. Time is short. I need to focus. Mr. Stewart, I certainly appreciate you. You have arrived, you are here in front of us and we approach that because, you know, we know there's many Americans out there that have concerns about these systems. We certainly
recognize that. And you certainly bring those
concerns not only to us, but to others around
the country, and I know my colleagues have
talked to you about how you work with state and
local, and you have talked about your Poll
worker for Democracy program. You all send
e-mails to all of us and share with us a survey,
surveys. Are you surveying for this election,
are you going to be surveying for this election?
MR. STEWART: No, I am not exactly
sure what you mean by a survey, but we do have a
mechanism for feedback.
CHAIRMAN DEGREGORIO: So your members
are going to be working, they are going to get
you some kind of feedback?
MR. STEWART: First of all, we're not
a membership organization but, basically, what
we've done is encourage people, in terms of Poll
Workers for Democracy, which we're doing
together with other organizations, but we have
encouraged them to sign up with their county
election boards, do the training. We're just
there as an additional resource.
CHAIRMAN DEGREGORIO: So your folks
are going to serve as a resource but they are
not going to be working as poll workers and
serve another hat?
MR. STEWART: No. They have got
enough to do assisting poll workers.
CHAIRMAN DEGREGORIO: Because I have
heard about that being done by some
organizations, because, is does concern me if
people are working as a poll worker, then going
to be looking at serial numbers, voters have to
be served.
MR. STEWART: Right.
CHAIRMAN DEGREGORIO: What do you
have to recommend to state and local election
13 officials to encourage greater transparency?  
14 And I understand what you have suggested here,  
15 transparency of the certification process. We  
16 appreciate your comments there, but in terms of  
17 working with state and local election officials  
18 about how they can be more transparent, maybe  
19 not just about their process, but what ideas  
20 would you suggest?  
21             MR. STEWART:  Well, I'd be happy -- I  
22 am doing this off the top of my head. I would  
23 be happy to talk about it more length, but in  
24 general, to not be dismissive. I think for a  
25 long time administrators were in the dark. It  
26 was only in 2000 that most people started to  
27 think about the election administration process  
28 at all. So it's a steep learning curve, but  
29 there's a lot people that have made that step,  
30 and are very concerned, and don't like being  
31 dismissed, as, well, you just don't know how  
32 complicated this is, because a lot of us do  
33 actually know.  
34             That would be a general statement.  
35 Making as much available on a web site,  
36 secretaries of states web site, county web site,  
37 making as much information as possible available  
38 there, so that there is no sense that something  
39 is being obscured or hidden, or thinking that no  
40 one's going to be interested in that, because I  
41 am someone who is interested in those sort of  
42 things, and we find it frustrating when it is  
43 difficult to find things that should be publicly  
44 available. So error on the side of too much up  
45 on that web site. I have had very good  
46 experiences in contacting states and local  
47 election officials by and large, particularly  
48 New Mexico. They were remarkably helpful to me.  
49             MR. SHAMOS:  And make it openly
Mr. Chairman. I have a question for each of you and I will set it up as best I can. First, Dr. Shamos, everybody knows I have been around this stuff for a long time. I have admired your work over the years and considered you, considered that work a great help. You've been doing in a number of the states. As you know, we asked you to participate as one of our peer reviewers. We hope that you will find to do that because we need people like you to work with us to make this better, which leads to my question. I am really puzzled knowing the kind of work you do, how sincere you are, how in depth you are about it, have you ever taken the time to detail these problems that you clearly state here and go back to some of the laboratories and say, hey, guys, you missed this stuff, what's going on, what's the problem here? Because I am really puzzled by that, knowing the level of consistency and type of work.

MR. SHAMOS: I will respond. For some of you, voting is a full time job. For me, it never was, although it's recently turned into that.

DIRECTOR WILKEY: Thank you. And I do hope that you will reconsider and maybe find a little spare time because we need the expertise that you bring.

MR. SHAMOS: To retain your good will, I hereby accept your offer to become a peer reviewer.

DIRECTOR WILKEY: Thank you.
business, a long time ago, I was an elementary
teacher. We had an exercise we did with the
kids where you divide them up, put the blue eyes
here, and brown eyed kids over here. Over a
period of time of daily exercises and
discussion, we had the brown eyed kids believing
that the blue eyed kids were smarter and
brighter than they were on a daily basis.
We're almost seeing that on a daily basis in
terms of the reliability of the voting systems
in this country in that every time we turn on
the TV, no matter what time of day, we're told
that we can't believe and trust these systems.
You have seen a lot about what's going on out
there, and I trust your judgement.
But have you drawn any conclusions of
what percentage you think are real serious
problems we need to focus on or what are
problems related to the process, a poll worker,
somebody that don't follow procedure, a voter
makes a mistake, a problem with transport. Have
you drawn any conclusions in that area so that
we can begin to decipher what is real, what is
not.

MR. STEWART: I think it's a question
of what is real and what is not, and there is a
spectrum of what is transparent, sort of issue.

DIRECTOR WILKEY: Yes. I think
that's where we're trying to get. We need folks
like you, Mr. Shamos, and others to work with us
to getting there.

MR. STEWART: I'd love to be able to
do that.

CHAIRMAN DEGREGORIO: I appreciate
that, because I think it's important for people
to understand. I voted for the first time on a
DRE machine, just a few weeks ago. Thank you
very. We appreciate the comments and your
written testimony. Feel free to add to it. If you have any more suggestions before deadline Tuesday at five o'clock. Thank you very much.

Now, we have our last period for the hearing today is our public comment period, the public, anyone has the opportunity to testify before us, anything they wanted to comment upon regarding this certification program that we have put forth, and we only had one person sign up, and that's Nancy Wallace.

Nancy, are you here? Nancy is from verifiedvoting.org. She's in San Francisco, California.

Did you come all the way here?

MS. WALLACE: No, sir. I am a local volunteer.

CHAIRMAN DEGREGORIO: We appreciate you coming up. Three minutes. Any length of written testimony you want, but please, if you can summarize that in three minutes.

MS. WALLACE: I will do my best. I apologize if I speak quickly. I thank you for your patience today. Thank you, very much, for the public participation. I am testifying and my remarks will be supplemented by more detailed comments submitted by Tuesday. I am a volunteer, but I requested the privilege of representing the organization today because of my professional capacity. I work for Computer Scientists Corp, CSC, a supervisor of a team of three software testers. I work every day with the challenges of software testing. Section 1.4 one of its purposes it to devote increase voter confidence in the use of voter systems. Given the current crises in our voting systems and the EAC process under which NASED were certified, that is an admirable goal. Public confidence
can only be increased by making the process as transparent to the public as possible. The public must have access to the relevant information on which certification decisions are made to parties in that process.

We applaud your goal of a certification process that is open and public as I am going to highlight. Unfortunately, the specific provisions in the draft fail to live up to that objective. Instead, they strictly limit public participation to speculator status. We note that the word manufacturer appears over 340 times. Public 13 times. This reflects emphasis given on the certificate process. Another sign of imbalance is the number of pages dictating rights of manufacturers but no articulation of the rights in the certificate process. Only two sections refer to public participation, and vaguely at that.

That's it. As a result, the process remains a mostly private discussion between the manufacturers, the testing labs, and the EAC. Some examples of missed opportunities are no mechanism for academic researchers, no mechanisms by which the voting public can file incidence reports. Test plans are not peer reviewed particularly prior to use. Standard testing meets such as negative testing interface saying data correction contract not be reviewed by independent professionals.

At CSC, quality assurance defines management. We test six levels, units, system integration, functional quality, performance. Which of these is being done, how well, and how would we know how well tested is my voting system. The American voter has no way of knowing.

In our written additional testimony,
we will make constructive suggestions as to how
the current draft be revised to accomplish that
goal. Sorry for the speed reading.

CHAIRMAN DEGREGORIO: Thank you, Ms.
Wallace. We appreciate that. We encourage
additional comments. I believe 5:00 P.M.
Tuesday October 31 was the deadline using
eastern standard time to be receive that. Thank
you very much.

Any final comments? Do we have a
motion to adjourn.

VICE-CHAIR HILLMAN: So moved.
COMMISSIONER DAVIDSON: Second.
CHAIRMAN DEGREGORIO: Motion to
adjourn the meeting second. All signify by
saying I. Opposed. Guys, the meeting is
adjourned. Thank you.

(Thereupon, the above meeting was
adjourned at 4:30 o'clock, p.m.)

CERTIFICATE OF COURT REPORTER

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

__________________________
Jackie Smith