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

Taken at the offices of the U.S. EAC
1225 NEW YORK AVENUE, N.W., SUITE 150
WASHINGTON, D.C.

Taken on the date of:
THURSDAY, OCTOBER 26, 2006

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

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

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

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

21 (The Pledge of Allegiance.)

22 CHAIRMAN DEGREGORIO: I'd like to ask⁴

1 our counselor, Julie Hodgkins, to conduct the
2 roll call, please.

3 MS. HODGKINS: Thank you,
4 Mr. Chairman.

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

8 CHAIRMAN DEGREGORIO: Present

9 MS. HODGKINS: Gracia Hillman?
10 VICE-CHAIR HILLMAN: Here.
11 MS. HODGKINS: Donetta Davidson.
12 MS. DAVIDSON: Here.
13 MS. HODGKINS: Mr. Chairman, there
14 are three members present and a quorum.

15 CHAIRMAN DEGREGORIO: Thank you,
16 madam counsel.

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

21 VICE-CHAIR HILLMAN: Mr. Chairman,
22 I'm not sure if I should do this before or after 5

1 the adoption, but there has been a last minute
2 change on the panelists.

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

7 VICE-CHAIR HILLMAN: Thank you. So
8 moved.

9 MS. DAVIDSON: Second.

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

13 I'd like to welcome all of you. I am
14 Paul DeGregorio, Chairman of the Commission.
15 I'd like to welcome you to our new quarters on
16 the first floor of this building. Many of you
17 have participated upstairs. We've acquired this
18 space up here. Our Inspector General is
19 actually on the other side of that wall, and we
20 have this space that we're going to use for our
21 meeting. It's a little more accommodating than
22 the space we had upstairs. It allows us to have 6

1 a few more people in this room. So I welcome
2 all of you.

3 We want to welcome some international
4 guests who are here. Mr. Kessler, who is former
5 parliamentarian from Italy, head of an 18-member
6 delegation from the organization for security
7 and scope operation in Europe. The delegation
8 is here to assess our U.S. elections coming up
9 on November 7th. We appreciate his attendance.
10 And Conrad Weski from Poland, who is also here
11 from the OSCE. Welcome, gentlemen, and welcome
12 others who are here representing various
13 organizations and members of Congress. We
14 appreciate your participation and attendance at
15 this meeting.

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

22 COMMISSIONER DAVIDSON: I so move

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1 that we approve the minutes.

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

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

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

15 VICE-CHAIR HILLMAN: My motion, yes.

16 COMMISSIONER DAVIDSON: I will second
17 the motion.

18 CHAIRMAN DEGREGORIO: Per VICE-CHAIR
19 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 8

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 9

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

13 pleased that we were able to get them out across
14 the country.

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

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

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

11 Certainly, one of the projects that
12 are underway, in addition to our Design For
13 Democracy, and our projects that we're working
14 with is in the area of voter fraud and
15 intimidation. We recently had a status report
16 presented to our Board of Advisors and Standards
17 Board. Following those meetings, we had a day
18 long meeting of the working group, a very lively
19 working group meeting, that lasted a full day.
20 They have presented their findings to our
21 consultants. We have a report by our two
22 consultants who did some yeoman's work, very

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1 detailed work, and that staff is currently
2 reviewing that report to make its
3 recommendations to the Commission.

4 As you know, the premise of that work
5 was twofold. One, to try to define the term
6 voter fraud and voter intimidation. And then

7 based upon various research activities that have
8 happened around the country, to present
9 recommendations to the Commission on how we
10 should proceed in a number of areas.

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

18 As you know, our Office of Inspector
19 General has been very busy. One of our primary
20 responsibilities is in the area of auditing the
21 81 billion dollars that was distributed by the
22 EAC to states. We recently concluded final

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1 appeal in the California audit. We have audits
2 that we're reviewing for recommendations to the
3 Commissioners in Georgia, New Jersey, Texas, and
4 Illinois. And the following states are in the
5 process of being audited: South Carolina,
6 Maryland, Pennsylvania, Virginia, and Indiana.
7 And we should have those reports within the next
8 month to six weeks.

9 Certainly, we want to remind those
10 here present and those who will be viewing this
11 on the web cast that we hope you will keep up to
12 date with everything that goes on here at EAC on
13 our web site, www.eac.gov, and also go on line
14 to request to be put on our mailing list, since
15 we do distribute a monthly newsletter every
16 month.

 Mr. Chairman, that is the
17 highlight of activities for this month. If you
18 have any questions, I will be glad to answer.

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

22 VICE-CHAIR HILLMAN: I do. I do have

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1 one. I know that we have been working on the
2 translation of terms of some of our materials.
3 And I wondered if you could give us an overview
4 of where we are with that, whether any of this
5 will be done before the election.

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

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

17 We also, based upon the very hard
18 work of our Asian working group, will be looking
19 at doing a similar type translation for Chinese,
20 Japanese, Tagalog, and Vietnamese, and Korean,
21 and we will also be looking at our native
22 American and Alaska native language to get

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1 similar type glossaries. So thank you for
2 reminding me.

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

11 I do have one more question. I want
12 to go to the report on the voter fraud and
13 intimidation. There's been an awful lot of
14 discussion about that, a lot of press report.
15 And so I'm wondering if you can just give us a
16 highlight as to the kind of inquiries we have

17 had from the public, and what our response has
18 been, and how we're handling that.

19 DIRECTOR WILKEY: Yes.
20 Unfortunately, there was a bit of confusion over
21 what was distributed at our May Board of
22 Advisors and Standards Board meeting. As I

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

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

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

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

4 VICE-CHAIR HILLMAN: If I might just
5 do a follow-up question to our general counsel,
6 and that is, I think, where some of the
7 confusion may have come in is what people
8 understand is a report. So some people think we
9 have a report, an EAC report. And we don't have
10 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

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1 contractors, those reports are reviewed by our
2 staff, and recommendations are made to you guys
3 for your adoption and deliberation.

4 VICE-CHAIR HILLMAN: So the
5 difference is between the reports that we
6 receive from our staff, from the consultants,
7 from personal services contracts or whoever is
8 doing work for us and then reports that we issue
9 once the Commissioners have arrived at some
10 conclusion?

11 MS. HODGKINS: Right.

12 VICE-CHAIR HILLMAN: Okay,
13 thank you.

14 CHAIRMAN DEGREGORIO: Questions.

15 COMMISSIONER DAVIDSON: No questions.

16 CHAIRMAN DEGREGORIO: Thank you,
17 Mr. Wilkey.

18 We're now in the business
19 portion, new business portion of our agenda, and
20 we have a resolution on National Worker
21 Appreciation Week.

22 Ms. Hillman has something to present.

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1 VICE-CHAIR HILLMAN: I would.
2 There's been a lot of talk about what it takes
3 to prepare for on election across the country,

4 what it takes to actually conduct the election
5 on Election Day. And the unsung heroes in this
6 country really are the people who volunteer to
7 work as election judges, poll workers, election
8 day workers. And we would add to that the
9 people who are election workers every day of
10 their career.

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

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1 local election officials as well.

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

8 So with that, I move adoption of the
9 resolution.

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

14 COMMISSIONER DAVIDSON: Second. And
15 I would like to add the one thing that I think
16 is very important is we need to recognize that
17 we can not do elections without all of these
18 over a million people, and that is what makes
19 our election succeed. And without their help,
20 we would not be able to accomplish this great

21 effort. So I definitely second the motion.

22 CHAIRMAN DEGREGORIO: Motion and

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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

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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

15 students, senior citizens, and mirror the
16 amazing diversity within their community and
17 American society as a whole, whereas, election
18 workers are the backbone of American democracy,
19 and their dedicated service allows our democracy
20 to survive, whereas election workers are
21 American champions of democracy, it is most
22 appropriate to recognize the contribution that

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1 election workers make each time that we cast our
2 votes.

3 Now, therefore, be it resolved that
4 the United States Election Assistance
5 Commission, in concert with the states,
6 counties, and election jurisdictions of the
7 United States, proclaims the week of November
8 5th through 11, 2006 as National Election Worker
9 Appreciation Week.

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

16 We call the question. All those in
17 favor, signify by saying I. Opposed?

18 This motion has been adopted. This
19 resolution will be signed later and distributed
20 to all of you. Thank you.

21 Now, we turn to the business of the
22 day regarding our testing and certification

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1 program for election equipment. You know, it
2 was four years ago tomorrow that President Bush
3 signed the Help America Vote Act, certainly an
4 important act that affected not just the three
5 of us at this table in our lives, but the lives
6 of every single American.

7 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

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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.

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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

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1 held accountable to a federal standard.

2 In addition to work on the
3 guidelines, NIST will assist the EAC with the
4 certification program through its national
5 voluntary laboratory accreditation program known
6 as NVLAP. This program will provide
7 recommendations to the EAC regarding laboratory
8 accreditation. After the EAC receives
9 recommendations from and NVLAP, the agency
10 executive director will make the final
11 determination regarding test lab accreditation.
12 Therefore, the EAC and NIST will work together
13 to hold the manufacturers of the equipment and
14 the labs who test the equipment accountable.

15 It is also important to know that
16 this whole process is transparent to the public,
17 that the EAC makes all information available,
18 consistent with federal law. We recognize that

19 this program will be voluntary. We also note
20 that, like the NASED program, our program is
21 likely to be used by a vast majority of the
22 states.

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

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

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

22 I'd like to present our first panel.
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1 Our first speaker is going to be Brian Hancock.
2 Our second, Galvin Gilmour, and our third, Mary
3 Saunders. Brian is the director of our EAC
4 voting testing and certification program. He is
5 the person at the EAC that we will hold
6 accountable for this program. Mr. Hancock has
7 over 20 years of experience in the field of
8 election administration and voting system
9 certification. He'll have responsibility for
10 this program, as I indicated.

11 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 Our third will be Mary Saunders,
19 chief of the standards services division and
20 NIST technologies, standards service,
21 procedures, policy support for federal agencies.
22 As such, she helps administer programs in the

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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 So without further ado, I'd like to
10 ask Mr. Hancock to give his testimony.

11 MR. HANCOCK: Thank you,
12 Mr. Chairman, Commissioners.

13 By way of background, I would first
14 like to explain for a few moments what we did to
15 produce this manual, how we developed it. Our
16 testing and certification program manual was
17 developed pursuant to the requirements section
18 of the Help America Vote Act. This provides for
19 certification, decertification, recertification
20 of hardware and software.

21 The development of the program has
22 generally followed the International

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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

6 consistent, competent, and reliable manner.

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

19 Let me now take a few moments to
20 highlight some of the new requirements of the
21 testing and certification program which have
22 never before been implemented in the voting

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1 system arena. I'll first touch on our quality
2 monitoring program. The EAC quality monitoring
3 program provides an additional layer of quality
4 control by allowing the EAC to review field and
5 voting systems, that is, those systems that
6 voters use on Election Day.

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

15 On invitation or with permission of
16 state or local election officials, the EAC may
17 conduct a review of fielded voting systems.
18 This review would be done to insure that the
19 fielded voting system is in the same
20 configuration as that that was certified by the
21 EAC, and that the systems also have the proper
22 EAC mark of certification. For the anomaly

1 recording portion, the EAC will collect
2 information directly from those that use
3 systems. The EAC's effectiveness of the
4 certification program and manufacturing quality
5 and version control, EAC will conduct contact
6 information from the election official's
7 description of the system at issue date and
8 location of the anomaly, type of election being
9 conducted, detailed description of what went
10 wrong. Credible reports will be distributed to
11 state and local election officials using this
12 voting system, as well as to the voting system
13 manufacturers.

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

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

16 but EAC-approved tools.

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

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1 Statements regarding EAC certification in
2 brochures, on web sites, on displays, and in any
3 advertising or sales literature, must be made
4 only in reference to the specific system that
5 was certified. Any action by the manufacturer
6 to such EAC endorsement of a product or
7 organization is also strictly prohibited.

8 Voting system manuals will also
9 require that manufacturers print specific
10 language warning purchasers that changes or
11 modifications not tested and certified by the
12 EAC will void the EAC certification of that
13 voting system.

14 Mr. Chairman, if you could let me
15 touch very quickly on some of the future steps
16 we'll be taking as we move forward here. As you
17 noted a bit over the next several weeks, EAC
18 staff will be reviewing all of the comments we
19 receive up to the close of the comment period
20 which is, again, as of 5:00 P.M. October 31,
21 2006. We will review every single comment that
22 we receive and incorporate those comments that

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1 are appropriate. Staff will brief Commissioners
2 to the updates that we make on this document,
3 and prepare for the full EAC vote at our
4 December 7, 2006 public meeting.

5 We also need to continue our ongoing
6 educational effort or election officials
7 manufacturers and the public on the requirements
8 of the program. That will be done primarily
9 through the use of the EAC web site, regular

10 meetings, and stakeholders and other appropriate
11 means.

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

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1 While NVLAP will be the technical and
2 quality assurance portion of the process, EAC
3 will be make sure they are certifying certain
4 things. Specifically, we will require no
5 conflicts of interest. EAC will require
6 laboratories, that they maintain and enforce
7 policies which prevent conflicts of interest or
8 appearance of conflicts of interest.
9 Laboratories will insures that the lab, it's
10 parent corporation, or any individual staff
11 member concerned with the testing of a voting
12 system, to include the spouse or minor child of
13 such persons, have no vested interest in the
14 outcome of a test process. Prohibited conflicts
15 of interest include the holding of any stock in
16 the entity these products is being tested or a
17 direct competitor of that entity.

18 Furthermore, no laboratory staff
19 member may be involved in both the development
20 and testing of a voting system or system
21 component, or otherwise providing consultation
22 or other services to a voting system developer

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1 that would compromise the independence of the
2 testing of the voting system or system

3 component.

4 The EAC program will also require
5 labs to certify that they do not currently, will
6 not in the future, employ any individuals in any
7 capacity related to the testing of voting
8 systems who have been convicted of a felony
9 offense or any criminal offense involving fraud
10 under either federal or state law.

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

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

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

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

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

18 As you know but I think it bears
19 repeating, this programs represents the very

20 first time Federal Government has been involved
21 in the testing and certifying of voting systems.
22 Since 1990, the Federal Government has been

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1 involved in the creating of standards for such
2 testing, but it has not been involved in the
3 testing of those systems to those standards.
4 That was performed by a non-governmental
5 organization, a private organization, the
6 National Association of State Election
7 Directors. For over a decade, they did this on
8 a purely voluntary basis. There were
9 limitations of funding authority and manpower
10 which affected the scope or the organization's
11 program. Now, however, the EAC -- HAVA, has
12 mandated EAC certify voting systems. EAC
13 management of this process will bring federal
14 resources and policies to bear, and this will
15 better serve election officials and voters by
16 increasing effectiveness of the program, and the
17 transparency in the program.

18 At first, I'd like to talk about a
19 few of the resources that are brought to bear.
20 One of these is a dedicated labor pool or group
21 of dedicated employees. This is the first time
22 there is a group of professional, paid employees

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1 whose sole responsibility is to operate a
2 federal certification program. It seems like a
3 minor point but, in fact, this is a new concept.
4 This will be the manpower to make sure that the
5 things that are stated in here are accomplished.
6 And also people will be working towards not only
7 making sure the program runs as it should, but
8 also improving the process year after year.

9 Along those same lines, we have a
10 written program. For the first time, we have a
11 manual that lays out the rights and
12 responsibilities of program participants. As
13 the chairman noted earlier, we also know that

14 participation in certification program is
15 voluntary, but for those that choose to
16 participate, adherence to the requirements and
17 procedures in this manual are not voluntary.
18 They are, in, fact mandatory.

19 We can't overlook the importance of
20 this written document. It brings accountability
21 to this process because we have the manpower and
22 a set of rules and modes that everyone agreed

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1 to. We can hold individuals accountable to this
2 process. And you see that in this manual
3 throughout it, from the very beginning when the
4 manufacturers register, to decertification of
5 the manufacturer registration, EAC requires
6 program participant to register with EAC before
7 they may submit voting systems for
8 certification. This process allows EAC to
9 predetermine whether manufacturers are, one,
10 capable and, two, willing to participate in the
11 program.

12 Essentially, at the very outset of an
13 organization's participation in the program,
14 we're bringing accountability into the mix.
15 We're having them agree to understand the
16 concepts in this manual and agree to perform
17 them. The manufacturer registration does a
18 number of things, gathers information we need to
19 know about the organization in order to run the
20 program. It assures they have certain programs
21 any organization would need to have in place,
22 such as a written policy assurance program,

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1 written version control programs, and written
2 documentation retention program to certify that
3 they will adhere to the requirements in the
4 manual and report any voting system problems.
5 We outline the process of accountability from
6 the very first.

7 The other side is decertification.
8 Decertification is to insure that the people are
9 following what we have laid out. Because there
10 are written procedures and a professional staff
11 with the ability to insure they are met. The
12 EAC operates a strong and fair decertification
13 program. This serves as a powerful tool for the
14 EAC to insure that program participants will
15 follow all EAC procedures and policies. With
16 this policy, the EAC has a means to enforce its
17 policy and insures that the voting systems used
18 are the same voting systems tested.

19 There is one other resource I'd like
20 to talk about just briefly, and that is
21 technical reviewers. EAC is going to use its
22 resources to employ technical experts. These

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1 experts will provide technical guidance to
2 policy makers and EAC throughout the
3 certification process. One of the main
4 functions of these individuals are to review the
5 work of the test labs. They are going to do
6 this throughout the process, both at the
7 beginning of the process and end of the process.
8 EAC will review and approve EAC test programs at
9 the very start of the process when the test
10 report is given, and the test report is a report
11 laboratories create.

12 The test plan. Test plan is a
13 document laboratories create when they test a
14 voting system to a particular standard. EAC
15 will review that to make sure that the plan
16 processed is going to be necessary to meet the
17 requirements. Then at the very end of the
18 process, the EAC will, again, use experts to
19 review the reports to insure that the tests
20 proposed to the test report have been
21 accomplished and the results are such. Beyond
22 resources, I know there are a number of federal

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1 policies that will benefit the system. One is
2 the federal standards of conduct. As a federal
3 agency, EAC and employees must follow federal
4 statutes and regulations concerning their
5 conduct. All of these federal statutes provide
6 criminal penalties, criminal liability.

7 All EAC involved in the certification program
8 will be required to follow ethics regulations
9 and laws. The best example of this is, of
10 course, federal requirements for financial
11 disclosure and conflict of interest.

12 Everyone who participates in this
13 program on behalf of the EAC will be required to
14 file a financial disclosure form. This form
15 will require them to disclose their financial
16 holdings and assets as well as outside
17 activities of employment, so we can be sure
18 nothing they are doing or nothing they own will
19 effect their ability to make decisions in the
20 process. That upholds the integrity of our
21 process, and protects the EAC employee as well.

22 Another policy that's brought to bear
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1 is that of transparency. As a federal agency,
2 the EAC is required to follow federal laws and
3 regulations regarding release of information.
4 We strive towards transparency in the
5 certification program. This means EAC intends
6 to make each testing and certification document
7 available to the public, as long as not
8 prohibited by the Freedom of Information or
9 Trade Secrets Act. Both these acts provide
10 protection for certain types of information.
11 Trade Secrets providing some penalties to
12 persons who release this information.

13 Our policy is we want to keep this
14 whole program transparent as the law applies.
15 An example of this would be our intent to
16 publish on our web page -- I am sure Brian would
17 confer the final test results of voting systems.

18 This policy will serve to increase information
19 flow to the public.

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

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

3 MS. SAUNDERS: Thank you. This
4 conformity is laid out in Section 231 of the
5 Help America Vote Act. The Commission has
6 chosen to carry out those responsibilities by
7 accrediting test labs that tests through the
8 National Voluntary & Accreditation Program
9 administered. It is a program in my division.
10 NVLAP have a voluntary program to accredit labs
11 found competent to perform specific tests or
12 calibrations or types of tests or calibrations.
13 The program was established by NIST in 1976 to
14 serve the needs of the Government and private
15 sector by fostering and promoting a uniformly
16 based and technical competence in the laboratory
17 community. The program provides unbiased,
18 third-party evaluation and recognition of
19 competence, as well as expert technical
20 guidelines to upgrade laboratory performance.

21 NVLAP procedures are codified in the
22 Federal Code of Regulations, formal recognition

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1 that a lab is competent to carry out certain
2 tests using recognized criteria and procedures.
3 General criteria are based on an international
4 standard, 170235 general requirements for the
5 testing of calibration laboratories. These
6 standards are used for evaluating laboratories
7 around the world. Lab accrediting bodies,
8 including NVLAP, assess factors relevant to the
9 laboratory's ability to produce precise,
10 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

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1 accreditation which include, as I mentioned
2 earlier, NIST Handbook 150, the generally
3 criteria 150-212, the 2002 voting systems
4 standards, the 2005 voluntary voting system
5 guidelines, and any other criteria deemed
6 necessary by the EAC.

7 Labs are required to complete the
8 NVLAP application process and pay applicable
9 fees. Rigorous on site assessments must be
10 conducted, and labs undergoing an assessment
11 must resolve any identified non-conformities
12 before accreditation can be granted.

13 To be accredited by NVLAP, a lab must
14 perform a core set of voting system tests in
15 house. Testing is specified in the Voting
16 System Standards 2002 and Voluntary Voting
17 System Guidelines 2005. Of those tests, the
18 core test methods include technical data package
19 review, fiscal configuration audit, source code
20 review, functional configuration audit. System
21 integration test involves tests and security
22 tests. Those are all core tests that must be

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1 done in house.

2 Non-core tests must be subcontracted, such
3 as compatibility, telecommunications,
4 environmental, electrical, acoustical and

5 cryptographic. To insure continued compliance,
6 all NVLAP labs undergo on-site inspection during
7 accreditation every two years thereafter to
8 evaluate their ongoing compliance with specific
9 accreditation criteria. So this is ongoing
10 oversight.

11 Let me take a few minutes to outline
12 the actions that we have taken to date. In June
13 of 2004, NIST published a federal notice
14 announcing any lab which wishes to conduct
15 testing should conduct NVLAP for further
16 information. NVLAP conducted a public workshop
17 in August of 2004 to review accreditation
18 criteria, as well as receive comments, feedback,
19 from participating laboratories and other
20 interested parties. And those workshop
21 documents are available on the NIST web site.
22 After the workshop, NVLAP began finalizing

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1 criteria for testing labs, and started making
2 necessary logistical arrangements to begin
3 actual assessment of the labs. NVLAP
4 identified, contracted, and trained technical
5 expert assessors to perform the on-site
6 assessments. So we have a cadre of technical
7 assessors working on this program.

8 In June of 2005, NVLAP issued a
9 federal register notice inviting interested labs
10 to submit an application for accreditation.
11 There was a 60-day window for the initial
12 applications. And they were given an
13 opportunity to undergo the first round of pre
14 assessment.

15 Pre assessment benefits both the lab
16 and accrediting body. Because it's a brand new
17 program, it was an important component of the
18 process. Although not a requirement, it is used
19 to prepare the lab for on-site assessment and it
20 is useful. It gives the laboratory the chance
21 to see how close they are to performing the

22 accreditation requirements, and also gives the 51

1 accreditation body the opportunity to fine tune
2 the process, and improve the technical checklist
3 which we use as part of each lab accreditation
4 program.

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

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1 The on-site assessments, NVLAP
2 completed first on-site assessments under voting
3 system testing program on September 22, 2006.
4 The lab was evaluated for competence to test to
5 the voting systems standards 2002 and the
6 voluntary system voting guidelines of 2005.
7 We're expecting a response to the NVLAP record
8 of the on-site assessment in early November from
9 the laboratory. This means the labs must either
10 correct any non-conformities found during the
11 onsite assessment or submit a correction plan
12 within the time period that I have mentioned.
13 The corrections will be reviewed by a NVLAP
14 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.

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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 web site, vote.nist.gov, that people might
17 want to take a look at, because I know that you
18 put many documents on that web site 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

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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.

9 MR. HANCOCK: Yes, thank you.
10 We have a number of reasons behind that. The
11 first and foremost is that the EAC does not
12 actually have legal authority to pursue some of
13 the things that we would like to. Congress
14 appropriates our budget, as you know, and this
15 means that we're prohibited by law from
16 collecting money from voting system
17 manufacturers, augmenting, and there is a law,
18 USC 333306(b) miscellaneous receipts act, that
19 prevents us from doing that. If there are other
20 ways of trying to do that, we would be more than
21 happy to hear from anyone out there that would
22 like to talk to us about those. And,

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1 essentially, the other reason is most programs
2 that we looked at in other industries allow
3 manufacturers to contract directly with the test
4 labs. That's through the FDA programs, FCC
5 programs. Virtually every other governmental
6 program does it that way.

7 Gavin, is there anything?

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

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

22 MR. HANCOCK: The EAC actually does

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1 not have the authority to or the desire,

2 frankly, to repeal NASED qualifications. The
3 value that the NASED qualifications currently
4 hold, they will remain as the states see fit to
5 do that.

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

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

15 Can you provide some details
16 regarding the decertification program?

17 MR. GILMOUR: A system basically can
18 be decertified if it is shown not to meet the
19 actual standards which it was originally tested
20 to, if it was modified in some fashion outside
21 of our program. And if the manufacturers just
22 failed to follow some of the requirements of our

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1 procedural manual that would affect the actual
2 operation of the system itself or at least call
3 it into question, these are the things that
4 could bring a decertification action.

5 The first step in a decertification
6 action is a formal inquiry, and the forum of the
7 informal inquiry is basically to determine
8 whether the matter should, in fact, be referred
9 for a formal investigation. The program
10 director in this case has to determine whether
11 the information received that would serve as the
12 basis of such an action is credible. And that,
13 if true, it would actually serve as the basis
14 for decertification. It's a very elementary but
15 important step. We wouldn't want to go through
16 an investigation, which itself can cause voter
17 consternation, if it's a completely baseless
18 claim, so that's the first step.

19 The next step is a formal
20 investigation where investigators are assigned
21 and a record is created. If the investigation
22 warrants, a notice of noncompliance is issued to

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1 the manufacturer. The manufacturer at this
2 phase throughout the process has an opportunity
3 to be heard themselves, if they need to be. And
4 they have the opportunity to actually fix the
5 problem. If they can fix the problem, then this
6 is their opportunity. If they can't, however,
7 they will be decertification, or if they refuse.
8 And they, of course, have appeal rights
9 throughout the process.

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

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1 manual.

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

7 Will there be additional guidelines
8 and information in this area?

9 MR. HANCOCK: Yes, Commissioner,
10 there will. As I noted, we'll be working on a
11 lab accreditation manual. We're not going to
12 repeat the work that NVLAP has done, but we'll

13 be looking for some of the things I noted, such
14 as conflict of interest of lab employees, making
15 sure they have not hired any people with
16 criminal background issues, with fraud. Those
17 are the types of things we'll be concentrating
18 on as opposed to the technical or quality
19 management issues that NVLAP has.

20 MR. GILMOUR: We'll be talking to
21 individuals willing to speak to us to make sure
22 there is a way that we can hold labs

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1 accountable, to make sure the standards tested
2 will be used.

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

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

22 MS. SAUNDERS: Will we go on

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1 unannounced visits?

2 COMMISSIONER DAVIDSON: Um-hum.

3 MS. SAUNDERS: In the general course
4 of events, no. The initial accreditation visit
5 is scheduled with the lab on the renewal visits.

6 However, there are provisions under the general
7 international standards that guide the operation
8 of accreditation bodies at the direction of the
9 specifier, in this case, the EAC, or indication
10 of a problem where we could go in for an
11 unscheduled visit, if there is a problem that's
12 identified.

13 COMMISSIONER DAVIDSON: Thank you,
14 very much.

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

19 COMMISSIONER DAVIDSON: Okay.

20 CHAIRMAN DEGREGORIO: Vice-Chairman.

21 VICE-CHAIR HILLMAN: Thank you. I
22 have for Brian Hancock actually a couple

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1 questions. Under the fielded voting system
2 review, you noted that upon invitation or with
3 permission, the EAC could conduct a review of
4 the fielded voting system. If we don't get
5 those invitations, what set of data or
6 information would we be missing?

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

17 The issue with the invitation or
18 coordination with local election officials is
19 more to make sure we're working in concert with
20 them. They have their own certification
21 programs. We want to make sure their rights and
22 their procedures under state law are allowed

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1 for.

2 MR. GILMOUR: If I could add
3 something to that too. The purpose of that is
4 simply the fact that an owner of a machine is in
5 fact. We, obviously, can't go in and look at
6 the system without their permission. But if
7 there was concern, and there was concern whether
8 the system was operated as intended, consistent
9 with the standards we have set, we can go using
10 other elements of the program that Brian talked
11 about. We can go to the actual manufacturer's
12 facility or look at other systems in the
13 manufacturer's possession that are for sale, for
14 example. Although it wouldn't be the actual
15 system that demonstrated the issue at hand, we
16 would still be able to review some of these
17 systems.

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

22 Under NVLAP, what part of that

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

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

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

16 VICE-CHAIR HILLMAN: Does NIST itself

17 accredit labs, issue the accreditation?

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

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1 VICE-CHAIR HILLMAN: But NVLAP does?

2 MS. SAUNDERS: NVLAP does.

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

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

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

20 We always try to do what has been
21 asked and expected of us, and sometimes we
22 really squeeze that buffalo off the nickel

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1 trying to do that, and that's not always the
2 right decision.

3 I just wondered if you had any
4 observations about that.

5 MS. SAUNDERS: About the cost for the
6 EAC?

7 VICE-CHAIR HILLMAN: Yes.

8 MS. SAUNDERS: Actually, that's
9 outside my area of expertise.

10 VICE-CHAIR HILLMAN: Okay, all right.

11 So then I will move back to Mr. Hancock and

12 Mr. Gilmour on this issue.

13 In accessing what the cost to the EAC

14 will be to run this program, what are we using

15 as guides, as examples? How are we knowing, as

16 we get into this and as we move forward, where

17 we're going to be with respect to the real cost

18 and what we will need to budget?

19 MR. HANCOCK: Yes, Commissioners.

20 That's kind of two good questions. I think, in

21 the future, after we have been in this program,

22 we'll have a very good idea of how much we can

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1 budget, especially after the initial period

2 where the manufacturers will be bringing all

3 their systems in. Frankly, right now, because

4 this is a new program, it's never been done

5 before at the federal level, we're essentially

6 relying on information we have collected from

7 other similar programs, looking at some of the

8 workload that NASED did during their

9 qualification of voting systems.

10 Quite frankly, this is a fairly novel

11 program, but we're hoping with the expert advice

12 we're getting, that we're doing a fairly good

13 job of doing that.

14 VICE-CHAIR HILLMAN: Thank you.

15 MR. GILMOUR: I think Brian is using

16 some of the numbers from NASED to give a sense

17 of volume and labor hours, but we're adding a

18 lot to the program that NASED couldn't do.

19 That's where a lot more information is going to

20 come in.

21 VICE-CHAIR HILLMAN: Thank you.

22 CHAIRMAN DEGREGORIO: Thank you,

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1 Commissioner Hillman.

2 Mr. Gilmour, what's going to happen

3 between this hearing today and our December 7th

4 meeting when a final program will be before us
5 to vote upon, how is the process going to work
6 for the Commissioners, for the staff to look at
7 and review the comments?

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

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

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

15 MR. GILMOUR: That's another part of
16 that policy determination. It can take effect
17 on that day or it can be January 1st. That is
18 also a policy decision that can be made. That
19 moment we go public on December 7th or between,
20 we could say, for example, we could say

21 registration to begin December 7th and the full
22 program will begin January 1. That is among the
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1 policy options available.

2 CHAIRMAN DEGREGORIO: Mr. Hancock,
3 would you summarize for me your thoughts on the
4 top three or four important points for people to
5 know about this program that is different from
6 the previous NASED program that I know you are
7 familiar with also?

8 MR. HANCOCK: Yes, Mr. Chairman,
9 absolutely. I think there are three points that
10 all of us have kind of hit on here that we
11 really need to bring out and keep hitting on,
12 and that is the fact that, for the first time
13 ever, we're instituting a process whereby we're
14 monitoring the voting system manufacturers and
15 the labs that are doing the testing to our VVSG
16 or VSS.

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

2 I think we all heard that under the
3 NASED program, there was no transparency, and I
4 think that's something we're very cognizant of
5 in this program.

6 CHAIRMAN DEGREGORIO: Mr. Hancock,
7 there's been a lot of media reports academics
8 who have come out and had concern about
9 potential for hacking into voting systems. And
10 we have looked at this issue, I know, ourselves.
11 Are you aware of any instance, has there ever
12 been any attempt by anyone to hack into the
13 voting system during an election period?

14 MR. HANCOCK: Mr. Chairman, to my
15 knowledge, no, there has never been anything
16 that we have ever found, or I have ever seen, or
17 looked into, or anything that's been reported
18 that that has happened on Election Day.

19 As you know, most of the studies and
20 issue coming out have been done in what I would
21 call sort of a laboratory environment as opposed
22 to a real election environment. Because, as you

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1 know, they are very different things.

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

7 MR. HANCOCK: Oh, I think so,
8 absolutely, and for a number of reasons. I know
9 that, first of all, the work that our friends at
10 NIST have done in the past several years and
11 continue to do for the new updates to the
12 standards are going to address even more
13 strongly security issues, issues of using
14 wireless technology, and others that we have
15 heard about in the newspapers. So from the
16 standard setting standpoint, it will be crucial.

17 Again, from our standpoint of the
18 testing and certification program, we will also
19 have recourse, as Gavin said, if issues come up,
20 to have the ultimate sanction, which is
21 decertification under this program, and I doubt
22 any inventors wants us to use that sanction.

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1 CHAIRMAN DEGREGORIO: A week from
2 Tuesday, millions of Americans are going to be
3 using all kinds of voting equipment throughout
4 the United States. Certainly, today, we know
5 that thousands of Americans are voting early or
6 voting absentee on electronic voting systems.
7 Based on the notice, can the American public

8 have trust and confidence in the results that
9 are going to be certified by election officials,
10 with the machines being used in this election?

11 MR. HANCOCK: Yes, Mr. Chairman. I
12 think the American public should have that
13 confidential, and for a number of reasons.
14 First of all, I have great respect for the work
15 that was done previously under the NASED program
16 but, in fact, no budget. But more importantly,
17 as we know, the machines are only a small part
18 of a much larger process of laws and
19 administrative procedures that are going to be
20 in effect to protect the voting public and the
21 integrity of the system.

22 As you noted from your very kind

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1 remarks, I have been in this mill for quite
2 awhile. I've worked with thousands of election
3 officials throughout the country, and I have
4 found as prospectus of the most dedicated public
5 employees. So I trust those individuals.

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

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

17 CHAIRMAN DEGREGORIO: Thank you.
18 Speaking of resources, I am going to ask the
19 executive director a question. How much
20 research, how many federal dollars are we
21 putting into this, our guidelines programs? How
22 much money are we spending on this?

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1 DIRECTOR WILKEY: Mr. Chairman, in
2 our 2007 budget, for example, our committee, a
3 substantial portion of our budget -- as you
4 know, we don't have our budget yet. There is
5 some continuing resolution. The appropriations
6 committees have considered this very favorably,
7 and we have a 17.1 million dollar budget. Of
8 that, 6.3 million will go for our certification
9 program. Of that, 4.9 million to NIST.

10 Mr. Hancock mentioned comprehensive
11 test sweeps that are going to be done. And so
12 4.9 million to NIST itself to do that
13 comprehensive piece of work, and we're looking
14 at continuing that.

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

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1 that kind of work.

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

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

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

16 Mr. Hancock, I may have missed this
17 in your testimony, but I just wanted to go back

18 and make sure that I understood it. In
19 developing this program, was there any model
20 that was used, any other Government program that
21 was involved?

22 MR. HANCOCK: Yes. We looked at

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1 several programs. Specifically, we looked at
2 the FCC, talked to some folks there in some of
3 the programs, very extensive programs. We
4 pulled some of their comments to use.

5 MS. HODGKINS: Thank you, very much.

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

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

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

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1 Certainly things in VOYA (sic) are
2 optional. We have the right to withhold. We
3 don't have to, but when the Trade Secret Act
4 comes in with VOYA, the EAC has an obligation to
5 protect the information. This information we're
6 talking about, and I am really oversimplifying
7 it here for the purposes I think is sufficient,
8 concept of releasing information that would
9 commercially harm an organization by, basically,
10 allowing you to produce the very thing they are
11 selling. Basically, things that would

12 commercially knowledge our information. It is
13 very limited. Some people think it's extensive,
14 but it is somewhat focused. We'll be working,
15 in fact, by executive order to have back and
16 forth with the submitters of information, but
17 we'll be working to release as much information
18 as is allowed by law. That is the policy. The
19 Commissioners have a group before us, and we'll
20 be working to do that.

21 MS. HODGKINS: Thank you.

22 DIRECTOR WILKEY: Just following up,
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1 first of all, I told you certainly that I am
2 very proud of the work you have done in this, a
3 tremendous amount of work. To Ms. Saunders, we
4 value our partnership.

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

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

22 MR. GILMOUR: In this process --

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1 first of all, this is the first time this
2 information law has been applied, this federal
3 information law has been applied to this area.
4 It is an interesting mix of marketplace

5 economics, technology, and law. It all sort of
6 converged in this area.

7 The EAC will be responsible in some
8 respects for being the referee. It can
9 potentially receive action, even lawsuits, from
10 people who want the information and people who
11 gave the information, which is somewhat of a
12 little complicated place to be. In this vane,
13 we have to look at these three things, and each
14 marketplace is different. If you look at case
15 law, it's almost a little depressing because you
16 will see in different areas, the Courts have
17 ruled on the same information in different
18 markets completely differently. So we have to
19 look specifically at this particular
20 marketplace, which is unique, certainly
21 different than the FCC market. That is a highly
22 competitive, fast moving market. I wouldn't

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1 suggest this marketplace isn't competitive, but
2 it's a different animal, a lot less layers, a
3 lot less, frankly, access to the systems. So
4 each thing has to be looked at independently.
5 We're hoping to sort of avoid showdowns at the
6 moment.

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

17 Now, we probably won't come to
18 agreement on something in which the EAC just has
19 to make a stand, make a call, but we're going to
20 try to avoid conflict at much as possible. But
21 the EAC is the authority and will make the call

1 DIRECTOR WILKEY: Thank you. Ms.
2 Saunders.

3 MS. SAUNDERS: Well, at it's base,
4 laboratory accreditation is all about competency
5 and technical competence. The process of that
6 NVLAP administers is transparent in that it's
7 laid out in the Code of Federal Regulations so
8 that it's clear what the components of the
9 process are. The actual relationship with the
10 laboratories while they are the accreditation
11 process, the amount of information that's made
12 public, is at the discretion of the labs.

13 Particularly, as an accreditation
14 body, NVLAP does not publish the names of
15 applicants, for a very good general reason. In
16 general, some of those applications may not make
17 it through the accreditation process, and it
18 could be commercially damaging to divulge
19 candidates in the case of the federal
20 communications system. And in the case of any
21 other specifiers, such as the EAC, with the
22 permission of the laboratories, divulge the name

1 of the applicants.

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

10 So there is a clear balance between
11 openness and transparency of the process,
12 protecting confidentiality of the individual
13 candidates as they move through the process. We
14 have to balance the business confidentiality
15 aspects with the broader public need we would

16 here from the EAC.

17 DIRECTOR WILKEY: Thank you, Ms.
18 Saunders.

19 CHAIRMAN DEGREGORIO: Thank you, Ms.
20 Saunders, and thank you, panelists, for your
21 information, and in answer to our questions. We
22 appreciate that.

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1 We have other panelists today who
2 will give us some instructive advice regarding
3 what you have just told us. Ladies and
4 gentlemen, we're going to take a seven-minute
5 break right now.

6 We're going on we want to get through
7 our next panel before we have a lunch break. So
8 we ask that our panelists be ready seven minutes
9 from now thank you.

10 (Short Recess.)

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

14 Well, our second panel today, we have
15 manufacturers of election equipment who are
16 representing the manufacturers of election
17 equipment, and we have testing laboratories.
18 Our panel includes Ian Piper, representing the
19 Election Technology Council, the Information
20 Technology Association of America. Mr. Piper
21 has active participated in the ITA election
22 Technology Council on standards certification

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1 and testing issues. He is also the compliance
2 officer for Diebold Election Systems, Inc. and
3 has over 16 years of experience in the election
4 industry.

5 Frank Padilla and Keith Wilson are
6 here representing Wyle Laboratories. Mr.
7 Padilla is the supervisor of the Wyle
8 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

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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,

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1 National Institute Standards & Technology, and
2 Technical Guidelines Development Committee for

3 the focus and urgency with which you have all
4 moved looking forward with both the Voluntary
5 Voting Systems Guidelines and the developing of
6 a new voting system testing and certification
7 program. We commend the Commission, your staff,
8 and NIST for opening the processes for input
9 from all concerned parties.

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

19 On decreasing testing frequency and
20 repetition, state and county officials face an
21 ever increasing volume of federal qualification
22 and state testing activity. Reducing the cost

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1 and delay imposed by continual and often
2 repetitive testing should be a key consideration
3 of the new certification process. By combining
4 the federal level ITA certification testing and
5 a few basic state level tests, the EAC would
6 streamline the system certification process,
7 saving valuable time for election officials and
8 reducing redundant, non-value added costs for
9 everyone.

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

14 On developing new uniform, economical
15 testing practices, not only is the testing of
16 system systems for the purpose of obtaining
17 federal and state certifications becoming too
18 frequent and overly costly, the situation may
19 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

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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,
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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

13 system certification procedures. We expect that
14 the EAC certification process will likely
15 incorporate several of those elements.

16 However, one element of the current
17 NASED certification process that the EAC has
18 indicated it may carry forward is the
19 discontinuation of certifying voting system
20 platforms that were certified under a previous
21 standard. It is important that the Commission
22 understand the economic and election performance

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1 impacts of such a step on state and county
2 election administrators, the voters, and
3 vendors.

4 We know that stopping any and all
5 certification testing of 2002 compliance systems
6 by a certain date, without an appliance for
7 implementing state required enhancements or to
8 correct errors found, will impose economic
9 consequences on states or election jurisdictions
10 which have recently purchased 2002 systems. Due
11 to the many meaningful changes made under the
12 2005 VVSG, there may be no way to economically
13 retrofit some systems to be fully 2005
14 compliant. Such equipment may have to be
15 discarded and new procurements undertaken.
16 Without additional federal funding to the
17 states, lack of a phased implementation, has the
18 potential to slow state adoption of the 2005
19 VVSS and EAC certification program. If every
20 proposed software and hardware modification
21 triggers submission for full system testing
22 under the 2005 Guidelines, there may be no way

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1 to keep 2002 certified equipment in the field.

2 We have several other smaller
3 concerns for the drafting of the manual on the
4 testing and certification program. Those
5 concerns are laid out in written testimony we
6 submitted, and they have been covered in

7 communications with the EAC staff. The ETC and
8 members are committed to work with Congress,
9 EAC, NIST, and our customers to achieve
10 successful implementation of the 2005 VVSG and
11 EAC testing and certification program. Above
12 all, we're in it to providing security,
13 accurate, reliable, and accessible voting
14 systems, and fulfilling not only the mandate but
15 the vision of HAVA. State adoption of the
16 federal voluntary voting system guidelines and
17 the voting system testing certification program
18 is what makes the federal standard effective.
19 If the goal is to improve states, then the
20 impacts of repetitive testing, new test
21 requirements, and limiting the options for
22 upgrading equipment need to be carefully

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1 considered.

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

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

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

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

20 Wyle Laboratories was founded 57
21 years ago as the first independent testing
22 laboratory for systems and components under

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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

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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

17 compliance with regulations at all levels.

18 Although most test are performed in
19 response to some type of regulations, there are
20 many tests that are performed solely to support
21 the manufacturer's reliability improvement goals
22 or to significantly reduce the risk of product

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1 failures and associated costs.

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

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

14 Wyle is bound by the policy and
15 ethics with respect to privacy of our clients.
16 We view the relationship between an independent
17 testing laboratory similar to that between a
18 lawyer and a client or between a doctor on a
19 patient. As a matter of policy, Wyle does not
20 discuss any client by name, nor will we release
21 any test information or data without written
22 consent from the client. Simply stated, test

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1 data belongs to the client and are not ours to
2 share with third parties. This is standard for
3 all the independent testing labs in the United
4 States.

5 It is not uncommon, however, for test
6 results from an independent source to become
7 available to the ultimate buyer of a product.
8 For example, in nearly all cases, environmental
9 qualification testing for military equipment,
10 the end customer requires evidence of the

11 qualification in the form of a report, which the
12 equipment developer must provide.

13 In the case of voting machines, Wyle
14 is an ITA operating under the auspices of the
15 EAC, which sets the testing standard and
16 requirements under which Wyle operates. Wyle's
17 role is to provide testing and evaluation
18 services as set forth in the current voting
19 system standards. Wyle is committed to work
20 with the EAC within the established guidelines
21 in order to help improve the process used to
22 accredit voting machines. This program is a

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1 positive step by the EAC to standardize the
2 testing process.

3 Wyle will be providing detailed,
4 written comments by October 31st, in accordance
5 with the EAC's request for comments. However,
6 there are a few comments we would like to
7 provide here. Under 3.5, provisional,
8 pre-election emergency modification, Section
9 3.5.3.3 states that a signed statement from a
10 VSTL that there is insufficient time to perform
11 necessary testing and complete the certification
12 process. There are many factors that can affect
13 this time frame, and the EAC should assure that
14 the testing can not be completed at any VSTL in
15 sufficient time prior to waiving any testing
16 requirements.

17 Under Section 4.3, it states that the
18 initial application package will contain a copy
19 of the technical data package for the system
20 submitted for testing and certification. This
21 package is normally reviewed by the ITA as the
22 first phase of the testing process. The ITA

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1 works with the vendor to ensure that all the
2 required documents are included within the TDP.
3 Is the EAC going to review this document now and

4 what is the anticipated time frame for
5 completion.

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

19 Once again, Wyle will be submitting
20 formal comments by the October 31st deadline.
21 Wyle Laboratories and its management and
22 employees work diligently to provide a vital

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1 service to government and industry by providing
2 the best possible range and quality of testing
3 services, including protection of the rights to
4 data that belong to our clients. Wyle also
5 understands the importance of voting machines to
6 our election process, which must always operate
7 with complete transparency to foster confidence
8 in the results.

9 Thank you, very much.

10 CHAIRMAN DEGREGORIO: Thank you.

11 Mr. Phillips.

12 MR. PHILLIPS: Thank you, Mr.

13 Chairman, Commissioners.

14 On behalf of SysTest Labs, I want to
15 thank you for the opportunity to provide
16 feedback on the testing of the proposed EAC
17 testing and certification program. We feel that
18 this program is one of the key elements required
19 to establish a much needed, consistent approach
20 for testing and certification and a much needed

21 accountable approach between the three groups
22 that must work together to insure that

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1 electronic voting systems are in compliance with
2 the Voluntary Voting Systems Guidelines. The
3 three groups were the EAC, manufacturers, and
4 the voting system test labs.

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

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

19 We see in this program clarification
20 of the voting system manufacturer's
21 responsibility to the voting systems test labs.
22 In the previous NASED program managed by a very

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1 dedicated group of volunteers, manufacturer's
2 responsibilities in the testing and
3 certification program were sometimes vague or
4 left open. It became incumbent upon the labs to
5 define for the manufacturers, based on the NASED
6 committee, what the manufacturers needed to
7 provide in order for testing to proceed. For
8 example, understanding of the requirements for
9 providing technical data packages, the level of
10 detail in the content, content varied from
11 manufacturer to manufacturer.

12 Since the TDP contains everything
13 that be will be used, the defining processes
14 associated with delivery of a TDP cannot be

15 understated. Guidelines will provide much
16 needed clarity to both manufacturers regarding
17 TDP delivery. In addition to other items and
18 activity associated with the testing engagement,
19 more clarification to program provides a
20 definition of roles of the VSTL. Much confusion
21 and misunderstanding has existed over the role
22 of the labs in previous ITA programs. And

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

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

22 At SysTest Labs, we feel strongly

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1 that consistency between the labs is paramount
2 to the success of the testing and certification
3 program.

4 The EAC and the public need to be
5 assured that the labs are meeting or exceeding
6 testing expectations defined by the EAC, NIST,
7 and NVLAP. Much of that will be controlled by

8 the audit process. We see in this program
9 clarification of the EAC responsibilities to
10 both the labs and manufacturers. Compliance,
11 testing, and certification imply that an
12 oversight organization exists that will insure
13 that testing is being performed to expectations,
14 results are being reported to the appropriate
15 parties, avenues for feedback, correction of
16 issues, interpretation of standards and
17 escalation of conflicts exists. Our
18 understanding and experience is that NIST,
19 NVLAP, in conjunction with the EAC will insure
20 that the VSTLs meet standards for testing,
21 reviews and evaluations for voting systems.
22 EAC is the oversight organization for
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1 actual testing and certification engagements.
2 And in the certification manual, EAC has defined
3 their role in these engagements, expectation
4 from both manufacturers and VSTLs, and overall
5 order of activities associated with testing and
6 certification engagement. This is a key element
7 in the program so that there will be no
8 confusion on the part of the labs or
9 manufacturers or when or how to interact with
10 the EAC and what can be expected from the EAC.

11 Finally, we believe that the draft
12 testing and certification program will help to
13 expose the testing process and insure greater
14 transparency and accountability to the public.
15 I have read and heard from many organizations
16 that the testing and certification program has
17 been secret and not open to the public scrutiny.
18 I am not suggesting this program creates a fully
19 transparent testing process. However, it does
20 define for all to see and understand what the
21 roles and responsibility are of the various
22 groups associated with the program. That

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1 coupled with the NIST and NVLAP audits and our

2 approach to testing, open approach at SysTest
3 Labs, we believe, will help ensure as
4 transparent a process as possible with the new
5 testing certification program.

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

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

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

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

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

7 MR. PHILLIPS: Yes, we did. During
8 the drafting and development of the 2002
9 standards that were open for public comment, and
10 our staff reviewed the standards and did provide
11 feedback to the committees and similar with the
12 2005.

13 VICE-CHAIR HILLMAN: And as you're
14 doing your work, testing voting equipment
15 against the standards, have you ever had an
16 opportunity to suggest back to what would have
17 been then the Federal Election Commission, now
18 the EAC, if you see a gap or something that

19 needs to be addressed that isn't covered in the
20 standards, has that ever happened?

21 MR. PHILLIPS: Yes, it has. There
22 have been times when either a gap has been

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1 identified or the interpretation of the
2 standards is very open. So as we could get in
3 touch with at the time, the techie, the NASED
4 Technical Committee. That was really our avenue
5 to feedback to NASED.

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

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

14 MR. PIPER: With respect to the 2002?

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

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

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

21 MR. PIPER: Individually, the
22 companies may have done that, but I am not aware

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1 of what they might have submitted at that time.

2 VICE-CHAIR HILLMAN: One of the
3 things that I think is great about what we're
4 doing is being able to provide the kind of
5 transparency to this process that the public
6 wants.

7 You know, balancing what is appropriate,
8 what's not appropriate, appreciating the remarks
9 from Mr. Padilla, from Wyle about What's
10 proprietary information but still the process.
11 Now, I know from experience, a lot of groups,

12 particularly the advocacy groups, aren't going
13 to bother themselves with the details. It's a
14 very complex process, but when you go through
15 the layers of the process, it does reveal the
16 level of scrutiny and assurance that everything
17 that can be done within the realities of budget
18 and timing are being done to insure the
19 integrity of the systems. And we know that
20 election officials are just so overloaded with
21 their work, that they have to rely on the
22 confidence of the test reports that are coming

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1 out of the laboratories.

2 In that context, I do have a question
3 for you. And I know with certainty that you are
4 all well-read and well-versed individuals, and
5 that you are fully engaged in the entire
6 election process and are probably keenly aware
7 of the public debate, particularly through the
8 media, about the lack of security in the systems
9 and the kind of -- or I should say the lack of
10 confidence that is being bantered about.

11 And I am particularly troubled that
12 there are people in this country who believe
13 votes can be stolen from the machines. That's
14 sort of an indictment against the people who are
15 manufacturing the machines, testing, and
16 certifying the machine, and election officials
17 responsible for running the machines. I would
18 like your perspective as to why people believe
19 that the machines are so vulnerable that people
20 can steal votes from them. We will start, ITA.

21 MR. PIPER: With respect to why,
22 that's a very good question. I would like to

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1 understand that myself, but as to the reasons
2 why they think they can be stolen, I don't agree
3 with them. I think the units themselves were
4 designed to be used within the procedures, and
5 with the people. And with all three of those in

6 combination, that provides security for the
7 election.

8 VICE-CHAIR HILLMAN: And as a
9 follow-up to that, when there is a problem with
10 the system, there is now more scrutiny and
11 exposure to all of this than there was ten years
12 ago. When there is a problem to the system,
13 what does ITAA believe the manufacturers should
14 do to address that in a way that provides the
15 kind of explanation to the voters as to what the
16 problems is, and what's being done about it?

17 MR. PIPER: When it comes to
18 individual problems, I can't comment on what
19 their policies would be.

20 From the ITA perspective, I would
21 think that member companies would want to step
22 up to the plate and be able to present to their
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1 customers what the issues are with the system,
2 and if it's a design defect, correct that.

3 VICE-CHAIR HILLMAN: Does the
4 association have any kind of code of
5 responsibility on its members on that issue?

6 MR. PIPER: There is none, but each
7 of the member companies do have their own codes
8 of conduct.

9 VICE-CHAIR HILLMAN: Wyle, either or.

10 DIRECTOR WILKEY: As far as the
11 general population goes, there is a general
12 resistance from paper to technology. I had a
13 college professor that said any advanced
14 technology is virtually indistinguishable from
15 magic. I think, for a lot of people, the voting
16 machines fit into that category, touch screen
17 machines, and there is a resistance to that
18 change. I think we can only overcome that with
19 education.

20 VICE-CHAIR HILLMAN: Mr. Phillips.

21 MR. PHILLIPS: Well, I echo those
22 same comments, that because of the technology

1 advancements and the unknown nature of those, a
2 lot of folks don't understand what's actually
3 happening behind the touch screen device. They
4 feel they can have a greater understanding with
5 a piece of paper in their hands.

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

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

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

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

12 MR. PHILLIPS: I think part of it,
13 the lever machine, you actually flipped the
14 physical switch, or Tom Wilkey, you actually
15 pulled a lever, saw those switches. I think the

16 whole concept is physically seeing something. I
17 get a lot of this information from my parents in
18 the sense neither of one of them are very savvy
19 with computers. My mother was very resistant to
20 grocery store scanning devices, and never
21 trusted them for years, even though she got a
22 receipt.

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

6 DIRECTOR WILKEY: One last thought.
7 Of course, one of the larger voting machine
8 manufacturers also makes the majority of ATMs
9 across the world.

10 Nobody has web sites talking about
11 ATMs short changing people, but there are a lot
12 of web sites out there about short changing
13 voters. Great dichotomy.

14 CHAIRMAN DEGREGORIO: Mr. Piper.

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

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

22 CHAIRMAN DEGREGORIO: I'm going to

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1 take the next series of questions. Mr. Piper,
2 in your testimony, you say the members of the
3 Electronic Technology Council urge EAC to allow
4 for state petitions to audit federal test plans
5 for the testing of test requirements.

6 What do you mean by state petitions?

7 MR. PIPER: They actually will take
8 the foundation, the federal certification
9 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
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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
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1 would be helpful if you all would provide us
2 with some of your suggestions. I think we'll

3 take a look at this issue, in fact, to have our
4 own definition or some definition sitting here.
5 We may have a different take on it, but I think
6 it's important to hear from you what you think
7 it should be.

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

16 CHAIRMAN DEGREGORIO: I'd like to ask
17 perhaps all of you about this issue of volume
18 testing of voting devices, and what takes place
19 there. I voted a couple weeks ago in St. Louis
20 county. I am going to be up there for the
21 election. I voted on the touch screen device.
22 There were 3 to 500 people voting every day on

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1 these devices. So I estimated that the one
2 device that I voted on would probably have over
3 a thousand votes cast on it by the time they
4 take the results off for Election Day.

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

15 Also, we have 27 states that will now
16 requiring voter verified paper audit trail by
17 paper devices attached to the touch screen
18 machines that in 2004 we had one state. We've
19 seen some problems with these devices in the

20 primaries this year, with paper jamming, ink
21 failing, those type of issues.

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

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

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

9 CHAIRMAN DEGREGORIO: And when you do
10 that, does our certification program work into
11 that process in any way, this program that we're
12 proposing, does it affect that in any way? Do
13 you, from our guidelines, if you look at the

14 2002 standards, 2005 coming up to deal with this
15 volume testing?

16 MR. PHILLIPS: I believe so. Jim,
17 they still have those test requirements for
18 2005. Yes, the same test requirements. Jill
19 Knolls is our compliance director but, yes, they
20 do, and we will still run those same tests.
21 Probably there will be additional tests based on
22 the VVSG.

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1 CHAIRMAN DEGREGORIO: Any other
2 comment?

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

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

14 MR. PADILLA: Well, the short answer
15 is yes, but rarely. Generally speaking, before
16 anything is fielded or put forth to a consumer,
17 the testing has been completed and the product
18 has been certified. Occasionally, after
19 something has been fielded in the military or
20 wherever, there is a problem, and the Government
21 will come back for additional testing that
22 doesn't go through the manufacturer, but the

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1 greatest preponderance of everything that is
2 tested in the United States, the manufacturer
3 tests, it certifies, passes along the report to
4 whoever the ultimate user is.

5 CHAIRMAN DEGREGORIO: So it's private
6 industries that are paying, for the most part,

7 but there have been cases you're telling me the
8 Federal Government has stepped in to pay for a
9 specific test of something that they may have
10 discovered some problem with?

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

14 MR. PHILLIPS: At SysTest Labs, it is
15 a little bit different. We focus primarily on
16 software. One of our major lines of business is
17 what's called independent verification
18 validation. It is very extensive software
19 testing, as much of what goes on in the IT
20 world. That is generally paid for by the state
21 governments. It is a contract that we have with
22 the state agency, could be the Department of

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1 Labor. Whoever is asking a manufacturer to
2 build a system for them, they actually hire an
3 independent organization to come in, do testing
4 reviews of that system independent of the
5 manufacturer.

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

15 CHAIRMAN DEGREGORIO: Thank you.

16 COMMISSIONER DAVIDSON: Thank you.
17 My Commissioners have done a great job with this
18 committee, but Mr. Phillips, to go back to the
19 product that is developed at the time you are
20 doing the testing on that.

21 MR. PHILLIPS: That's correct.

22 COMMISSIONER DAVIDSON: I came from

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1 Colorado, so I am very familiar with IV&V.

2 MR. PHILLIPS: That's correct.

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

6 MR. PHILLIPS: That's correct.

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

10 Mr. Piper, one of the things that you
11 said in your testimony that you felt like the
12 2005 VVSG was going to require some
13 re-engineering on hardware. If so, can you tell
14 me what that re-engineering might be, what it
15 might require.

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

17 COMMISSIONER DAVIDSON: Thank you.

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

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

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

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

11 COMMISSIONER DAVIDSON: I thank you.
12 I think that's my questions. Thank you, very
13 much.

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

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

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

16 Is my vote going to count?

17 MR. PHILLIPS: Absolutely.

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

20 MR. PADILLA: Very much so.

21 MS. HODGKINS: Thank you, Mr.

22 Chairman, for the opportunity. I did have one
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1 or two questions, if you will indulge me.

2 First, to all the panelists, thank
3 you very much for your comments on our program.
4 We look forward to getting your detailed

5 comments. I'd like to take a little bit of a
6 step back and talk about something that Mr.
7 Padilla brought up in his testimony, and that is
8 experience with other doing other Government
9 work. I guess the question that I have for you
10 is this, do you at Wyle Laboratories -- and
11 certainly, Mr. Phillips, if you want to respond
12 to this as well for SysTest -- test to programs
13 regulated by the Federal Government? And if so,
14 can you give me examples of programs that you
15 tested, please?

16 MR. WILSON: We literally do
17 thousands of test programs for hundreds of
18 customers against hundreds of standards. And,
19 yes, we test to FCC standards, certify to FCC
20 standards, and FAA standards, and all the
21 Government military specifications and NASA
22 specifications and regulatory commission

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1 specifications. Like I said, literally
2 thousands of tests for hundreds of customers, so
3 we're experienced at testing to standards for
4 Government agencies.

5 MS. HODGKINS: Thank you,
6 Mr. Phillips.

7 MR. PHILLIPS: Well, at SysTest labs,
8 in addition to the at testing work we do, that
9 we did, we're getting into doing testing for
10 FDA-regulated industries as well. Most of our
11 other customers are commercial organizations
12 that may have standards that they impose upon us
13 from other agencies, but they may not come
14 directly in the Federal Government. We do have
15 standards from some of our state government
16 customers in our ID&D work.

17 There is a significant number of
18 projects that we do every year in that.

19 MS. HODGKINS: Thank you, very much.
20 I wanted to follow-up on what you said. Would
21 you say that the programs that you test to for

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.
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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.)

15 CHAIRMAN DEGREGORIO: Can we have
16 everyone take their seats, please, so we can get
17 started. Thank you. And thank all of you again
18 for coming back for the afternoon session of
19 testimony we're receiving regarding our new
20 testing program that is out there to be
21 commented upon.

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

19 Sandy Steinbach, from the state of
20 Iowa, who I met -- maybe it was back in 1989,
21 Kansas City. I know that you have been involved
22 since 1985 in the election process. You have
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1 served as director of elections, responsible for
2 supervising county commissioners of elections as
3 they administer federal, state, and local
4 elections in the state of Iowa. Also
5 chairperson of the National Association of State
6 Election Directors Accreditation Board,
7 certainly that is applicable to our discussion
8 today too because Sandy has been very involved

9 in our staff trying to provide us with
10 information about the NASED program, certainly
11 suggestions on how we can move forward with our
12 own program because the board that she was on,
13 she was answerable from '94 to 2006 for the
14 accrediting election systems throughout the
15 country.

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

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

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

17 MS. MCGEEHAN: Well, thank you very
18 much for the invitation to provide testimony
19 today. I do want to say I was very pleasantly
20 surprised when I did read through the manual.
21 It is extremely well written, and I think it
22 represents a huge step forward in the testing,
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1 certification process for testing of electronic

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 The manual appreciates states, the
10 states' role in the certification process, and
11 the states' role in maintaining uniformity
12 within the states, appreciates the local role of
13 election officials, the challenges those
14 officials face in the ongoing maintenance of
15 electronic voting equipment, appreciates the
16 challenges of vendors, and you can see that this
17 process will eventually result in a better
18 product down the line for vendors. And then
19 finally and most importantly, the manual
20 appreciates that the entire process must serve
21 the voters, so that voters have increased
22 confidence and trust in the voting process. I

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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 I just have a couple of questions and
7 comments really on some of the more interesting
8 aspects that are contained in the manual.
9 Regarding suspension of registration, the
10 process requires that vendors become registered
11 with the EAC before they can go through the
12 certificate process. And I wasn't clear if
13 suspension could go on indefinitely. I would
14 suggest the way I read the manual is if a vendor
15 or manufacturer is suspended, they can't then
16 put forth any, can't submit any new
17 certification. You wouldn't want that process
18 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
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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.

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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.

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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

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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

6 certified during the period in which the
7 manufacturers are trying to cure the system. It
8 seemed to me that it was still certified, but I
9 wasn't sure, and I wanted to make sure that
10 states and localities using that equipment be
11 notified of whatever bug it is or whatever issue
12 it is, and be notified of any work around during
13 this opportunity to cure period.

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

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1 very quickly.

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

7 Next to the last point is on the
8 transparency, the fact that most or many of the
9 certification documents are going to be posted
10 to the web, I would urge that maybe in this
11 manual, a few documents be specifically stated
12 as being required to be posted. What we find in
13 our certification process is many vendors will
14 label every single document filed as proprietary
15 and confidential. And so it might be helpful
16 that the EAC, ahead of time, define what is not
17 proprietary and confidential. For instance,
18 perhaps user manuals would be something that you
19 could state right now that could go on the web
20 or is not subject to trade secret. The
21 manufacturers may have a different point of view
22 on that, but I would say that could be a very

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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
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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

17 was handed to you with the Help America Vote
18 Act, and it provides you with the statutory
19 mandate to test and certify voting systems.
20 Most of your draft program manual is dedicated
21 to the structure for this essential purpose of
22 the EAC program. Along with the Federal

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1 Election Commission's 2002 Voting System
2 Standards and your own Voluntary Voting System
3 Guidelines, you have the foundation to build a
4 very good program. However, the program manual
5 and the standards are not enough. An adequate
6 voting system testing program can not be
7 operated without the hard work of exceptional
8 volunteers.

9 The NASED voting system program
10 operated for many years with those limited
11 resources. An excellent program that will serve
12 all of your intended purposes will need two
13 things that NASED never had, a budget, and a
14 staff. And we have said this over and over
15 again, but it really is true. As you begin your
16 program, I urge the Commissioners to support the
17 voting system and testing and certification
18 program with well trained staff members and a
19 generous budget. I don't have any specific
20 dollar or staffing recommendations. Your
21 recommendation in your next budget for two more
22 people and your millions of dollars, which is an

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1 awesome amount to somebody who's been doing it
2 on nothing, sounds like a good start. Your need
3 for qualified people and additional money will
4 doubtless grow as your program matures, to
5 provide the staff and the nation with the best
6 resources to make your program an excellent one.

7 The program manual says very little
8 about how the EAC will support state
9 certification programs, it's second articulated

10 purpose. One way for the EAC to do this would
11 be to facilitate the certification of new and
12 updated programs in odd numbered years, starting
13 in January of 2007. There are, I'm sure, a
14 number of vendors eager to get started, to get
15 new or modified systems, and it is very
16 important that the process begin as quickly as
17 possible.

18 The reason for this is that the closer it
19 gets to Election Day, the harder it is to
20 install and implement a new voting system, even
21 if it's an upgrade to one that's already in use.
22 In the last year or two, election officials

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1 found themselves in the helpless position to
2 find out whether their chosen voting system
3 would receive a NASED number with sufficient
4 time before Election Day to make it through
5 state certification as well. The testing
6 process can take a long time. The report review
7 process will also be very time consuming.
8 States that depend on the EAC for the first step
9 or for upgrades will benefit from an early
10 start.

11 Testing under your new program. The
12 third purpose mentioned in your program manual
13 to support local election officials is not
14 mentioned that I saw elsewhere in the program
15 manual. As you examine ways to provide their
16 service, I hope that you will continue to
17 consult with state and local officials to gain
18 insight into what the local practices are, as
19 well as the state laws and administrative rules
20 necessary to do meaningful acceptance testing.

21 I'd like to second Ann McGeehan's
22 remarks that the states are an important player

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1 in this process, and what would provide adequate
2 acceptance testing in state say would not be all
3 that is necessary in another.

4 The fourth purpose to increase
5 quality voting in voting system manufacturing
6 will certainly benefit election officials. I
7 look forward to additional details in the
8 fielded system review and testing section. I
9 presume that the quality control quality
10 assurance reviews and anomaly reports will be
11 useful in determining which systems would be
12 benefit from field review and testing. And I
13 would like to second Ms. McGeehan's statement
14 that the states, again, should be very involved
15 before the EAC goes in to work with local
16 election officials so that we're able to
17 cooperate with you, and make sure that all the
18 state requirements are met.

19 Increasing voter confidence is the
20 last of the stated purposes of the EAC voting
21 system testing and certification program.

22 In the recent past, there have been reports of

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1 studies that claim to expose flaws in some
2 voting systems. The allegations have been
3 dramatic and frightening. The EAC can help
4 voters and election officials understand these
5 claims by sponsoring a program review by
6 qualified experts to demonstrate dangerous flaws
7 in a voting system. The claims should be
8 seriously examined and replicated, if that's
9 possible.

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

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

15 Ms. Miller.

16 MS. MILLER: I want to first thank
17 the Commission for giving me an opportunity to
18 come here.

19 First, by way of background, in 2003,
20 I served as president of the National

21 Association of Election Directors, which until
22 this year administered the voluntary voting

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1 system standards. It was a tremendous
2 responsibility. I believe I can speak for other
3 election directors when I say we were happy to
4 transfer this program to the U.S. EAC. NASED's
5 administration of the voluntary voting system
6 standards was limited by a lack of resources and
7 infrastructure. Transferring this program gives
8 the testing and certification program both the
9 necessary level of resources and level of
10 technical expertise that is needed.

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

16 Finally, and importantly, in recent
17 debates over voting systems technology, EAC and
18 National Institute of Technology have proven
19 their neutrality and impartiality. Since
20 passage of the Help America Vote Act, a great
21 deal of time and expertise has been devoted to
22 transferring the requirements in HAVA to

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1 meaningful, practical guidelines. That document
2 represents a huge achievement.

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

11 The process of developing these
12 guidelines was not without controversy and
13 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

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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 confidence 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.

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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.

8 Ms. Steinbach, how would you describe
9 meaningful acceptance testing on your voting
10 systems in Iowa?

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

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1 function in a local election setting.

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

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

18 MS. STEINBACH: Well, we schedule
19 exams three times a year, and I know that we
20 already have a couple of exams scheduled for
21 January.

22 We won't review a system unless its

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1 been qualified under the federal standards. The
2 certifications that we have pending in January
3 probably already received NASED qualification.
4 However, our legislature meets beginning in
5 January, and we could see changes, for instance,
6 paper ballot receipt. There's been some talk.
7 Usually, there are changes after a legislative
8 session. It may not be a significant
9 modification, but most likely, there will be
10 small modifications.

11 MS. STEINBACH: Iowa needs to change
12 it's law to recognize your program. Currently,
13 Iowa law requires voting equipment be qualified
14 under the NASED testing program, and we will
15 need to talk to the legislature when they come
16 back in January to make sure that they recognize
17 your program as well. I will certainly be
18 enthusiastically supporting that.

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

22 MS. STEINBACH: This is the first 157

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

8 MS. MILLER: We will also have to
9 change -- it's not in our law, it's in our
10 regulations, but we also follow the NASED
11 certificate program. So it will have to be
12 changed to recognize the EAC process as well.
13 That will not be a hard thing for us to do. In
14 terms of changes, I don't see anything coming.
15 The one thing that may be on the horizon for us
16 to be the paper ballot, the receipt for the
17 voter verified paper ballot -- I mean, audit

18 trail for the touch screen machine, that might
19 create something that we need to look at a
20 little bit differently than we do now, but other
21 than that, I don't foresee any real changes.

22 COMMISSIONER DAVIDSON: In talking 158

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

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

19 COMMISSIONER DAVIDSON: I think that
20 would be helpful. It would be helpful for us if
21 it was pretty much the same across the board, as
22 well as for the other states to have some 159

1 guidance.

2 Another thing that I would like to
3 know from each one of you, as we know, Election
4 Day is very closely coming on all of us. I know
5 you are very, very busy. You have set out
6 procedures and considered making sure that you
7 have as much confidence in your voters that you
8 possibly can for accurate and fair elections.
9 Can you tell me what steps you put into place to
10 make sure that the voting equipment is as secure
11 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

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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

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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

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

16 pay attention to all these pages of details that
17 you have to attend to make sure the tests come
18 out right. So I would say it's mostly the local
19 election officials that I spend my time talking
20 to on that issue.

21 VICE-CHAIR HILLMAN: State
22 regulators, county officials, people in the

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1 administration, advocacy groups, legal defense
2 groups.

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

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

18 MS. MILLER: When we have our public
19 testing, I find that conversation taking place
20 with candidates who are there that may be
21 interested, wanting to make certain that the
22 information, the vote tally is doing what it's

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1 supposed to do. A lot of candidates, as you
2 mentioned, advocates as well, and from time to
3 time, some of the legislators, but not unless
4 they are running for election.

5 VICE-CHAIR HILLMAN: It's becoming
6 apparent that a lot of the people who are now
7 feeling a bit insecure about voting systems
8 don't really know the processes that are in

9 place, beginning with the national testing and
10 certificate of the systems, through to the chain
11 of custody and other security responsibilities
12 that elections officials have, and how it gets
13 transferred to the local. And while we
14 certainly wouldn't expect voters to have to get
15 into the details and nuances of this, we
16 certainly would hope that academics and advocacy
17 groups, but in particular, legislators.

18 And I am most curious to know whether
19 you have any kind of program initiative, any
20 experience, with trying to get state
21 legislators, county officials, any other groups
22 of elected or other public officials, to really

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1 appreciate what all is involved in this process.

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

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

18 MS. MILLER: The only time it comes
19 up in D.C. is when we go for budget hearings.
20 There may be conversation about it. There is
21 not any detail. There is the committee on
22 Government operations which is the committee

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1 that oversees the elections process, but it is
2 not as involved at it needs to be. And you are

3 absolutely right, they do not understand the
4 process, they do not understand what goes into
5 making sure that the systems are certified
6 before we get to Election Day. So there is not
7 a lot of conversation, but when it does come up,
8 it's actually right around budget time.

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

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1 okay, I get it, and it works.

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

19 MS. HODGKINS: Thank you, Mr.

20 Chairman. I just wanted to take the opportunity
21 to thank all three of you for your comments.
22 It is, obviously, vitally important to you that

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1 you and all of your colleagues buy into this
2 program and use it.

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

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

14 MS. MILLER: Absolutely.

15 DIRECTOR WILKEY: One of the most
16 disconcerting things, when you're looking from
17 this level, is that we've got so much media
18 going on out there about breakdowns of voting
19 machines. Unfortunately, we're not near the
20 ability to be able to track the number of
21 anomalies and take the wheat from the chaff, and
22 say this is human error or this is actually a

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1 machine breakdown. Because we have thousands of
2 pieces of equipment in use on Election Day.
3 This program isn't going to work unless we're
4 able to do that, and we're able to have
5 cooperation from the states and local
6 jurisdictions in tracking anomalies, what is
7 real, and maybe perhaps what is not real.

8 And I'd like to ask you, do you think
9 it's possible for states, in addition to being
10 legislators, to adopt the program, to also take
11 a look at requiring in some way local
12 jurisdictions to report this kind of

13 information. Because on a voluntary
14 information, I'm afraid it's not going to be the
15 level that we need in order to do a couple
16 things to make this program work, to be able to
17 track real problems, but also to assure the
18 American public that, yes, real problems, but
19 their percentage was human related. We made a
20 mistake punching the wrong button. This was a
21 real problem with the voting system.

22 Is that something that you think my
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1 former association would be interested in doing?

2 Can it work here?

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

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

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1 theoretically, it's a wonderful idea.

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

5 MS. MCGEEHAN: I would say that I'm
6 starting, because of all the public scrutiny on

7 the entire election process. I know that our
8 office receives calls from jurisdictions that
9 maybe wouldn't have called us in the past, but
10 they know that the press is going to find out
11 about it anyway, and so it's in everybody's
12 interest to lay their cards on the table.
13 Again, trying to set a uniform kind of
14 administrative process, I know we could do that
15 in Texas where we could adopt a rule that
16 required that reporting of malfunctioning
17 machines to us. I hear what you're saying,
18 Sandy. There is a lot of truth there too, but I
19 think the timing is good right now for something
20 like that. I think there's a lot of promise to
21 that.

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

20 DIRECTOR WILKEY: Thank you. I know
21 the old expression, "The truth will set you
22 free." We find that the number of problems

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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 joins 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

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1 distinguished gentlemen who follow the process
2 of voting devices, certification of voting
3 systems, very closely in different roles that
4 they serve, but our first speaker, Michael
5 Shamos, is someone that has distinguished
6 himself in this area. He is a faculty member of
7 the School of Computer Science, Carnegie Mellon
8 University, since 1975, also an attorney
9 dedicated to practice in Pennsylvania, and also
10 United States Patent Office. From 1988 to 2000,
11 Mr. Shamos was statutory examiner of electronic
12 voter systems, Secretary of Commonwealth of
13 Pennsylvania, to aid in voting system
14 examination during those two years. He
15 participated in every electronic voting system
16 examination held during those 13 years. In all,

17 he has personally examined over a hundred
18 different voting systems, participated in
19 certification, counting 11 percent of the
20 popular votes in the 2000 election. And
21 Mr. Shamos has testified before Congress in the
22 field of election system certificate.

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1 Warren Stewart is someone that has
2 been very active in examining systems that were
3 used for voting in the United States. He is the
4 policy director of VotaRist, USA, provides
5 advice to state level organizations across the
6 country. Mr. Stewart has worked in researching
7 and since 2004 New Mexico. He had VotaRist USA
8 weekly newsletter, which I know I receive.

9 Mr. Stewart, Mr. Shamos, thank you
10 for coming today. Mr. Shamos, we will start
11 with you.

12 MR. SHAMOS: Thank you, Mr. Chairman.
13 I certainly appreciate the opportunity to
14 testify today, although I understand that the
15 content of my testimony might be somewhat
16 unexpected.

17 In testimony before the House of
18 representatives on science in June, 2004, I
19 offered the opinion that, quote, "The system we
20 have for testing and certifying voting equipment
21 in this country is not only broken, but is
22 virtually nonexistent. It must be recreated

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1 from scratch or we will never restore public
2 confidence in elections. I believe that the
3 process of designing, implementing,
4 manufacturing, certifying, selling, acquiring,
5 storing, using, testing, and even discarding
6 voting machines must be transparent from cradle
7 to grave, and must adhere to strict performance
8 and security guidelines that should be uniform
9 for federal elections through the United
10 States."

11 Not only do I still hold that view,
12 but election events over the past two years have
13 convinced me even more that it is the correct
14 one.

15 As a state examiner, I often feel
16 like a pathologist, my examination table
17 littered with the dead bodies of voting systems
18 that passed federal testing but failed at the
19 state level. The average pass rate for
20 federally qualified voting systems in
21 Pennsylvania is approximately 50 percent, when
22 it should be well over 90 percent, and I often

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1 ask aloud during examinations how a particular
2 flaw could possibly have gotten past an ITA.
3 But my question is rhetorical, for I cannot find
4 out. Even when I see an ITA qualification
5 report, whether the system passed them or not,
6 but no information on how the tests were
7 conducted, how close the system came to failing,
8 or how many times a test had to be performed for
9 the system to pass.

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

22 I find it instructive that in the

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1 history of the iTA system, no system ever failed
2 qualification. Instead of a pass/fail system,
3 the only options as pass and hasn't passed yet.

4 There is no feedback to the public at all on
5 what, if anything, is flawed about the systems
6 that have been tested. This structure is
7 retained in the current draft manual, which does
8 not even contain the word failure.

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

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

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

13 The fundamental problem with federal
14 testing the VVSG is a built-in lack of
15 transparency. The laboratories are paid by the
16 manufacturers seeking certification, and they
17 answer to the manufacturers. They have no other
18 perceived responsibility other than to retain
19 their accreditation. They have no defined duty
20 to the public, or even to the states that rely

21 on their certifications.

22 The problem is not a lack of

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1 qualified laboratories. The problem is the
2 entire architecture of the VSTL system, which
3 must be rebuilt brick by brick, with due
4 attention to the public's interest in a
5 completely open process.

6 The manual does not address how a
7 VSTL is to be chosen to examine a particular
8 system, how it is to be paid, and to whom it
9 owes responsibility. This choice of VSTL should
10 not be made by the manufacturer, since this
11 encourage gaming the system, but should be made
12 by the EAC, preferably on a random basis. The
13 VSTL should not be paid by the manufacturer, but
14 by the EAC. The EAC can ultimately recover
15 costs from the manufacturer. The immediate
16 consumer of a certification report is the EAC,
17 which is answerable to the public. The
18 secondary consumers are the states and the
19 public, but the public never get to see what the
20 EAC and state officials are relying upon. The
21 draft manual states that is is a comprehensive
22 presentation of the EAC Voting System Testing

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1 and Certification Program, and is intended to
2 establish all of the program requirements. Yet,
3 the process by which a laboratory is engaged and
4 paid by a manufacturer is never mentioned, nor
5 is there any provision for audit that process.

6 The manual imposes conflict of
7 interest restrictions on EAC employees, but says
8 nothing about conflicts involving manufacturers
9 and laboratories. It contains no code of
10 ethics, nor even an overall statement of ethical
11 guidelines.

12 The manual is entirely too solicitous
13 of the supposed trade secrets of the
14 manufacturers. My belief is that any company

15 wanting to enter the voting system business must
16 check his trade secrets at the door. As long as
17 the code in voting system remains secret, the
18 public will never trust it, nor should it. But
19 regardless whether code should be secret or not,
20 the tests performed by the VSTLs and their
21 results and reports should certainly not be.

22 In Pennsylvania, every aspect of the

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

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

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

17 CHAIRMAN DEGREGORIO: I appreciate
18 your comments. I know you testified before, and
19 we appreciate your constructive comments. We'll
20 have questions too. I do appreciate that.
21 Mr. Stewart.

22 MR. STEWART: Thank you. I want to

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1 sincerely thank the Commission for inviting me
2 as a representative of VotaRist USA to address
3 you today. VotaRist USA is a nonpartisan,
4 national network serving state and local
5 election integrity organizations and citizens
6 concerned about the accuracy, accessibility, and
7 integrity of our elections. The Declaration of

8 Independence boldly asserts, "Governments derive
9 their just powers from the consent of the
10 governed," is transferred from the people to
11 those in power is the ballot box. Transparency
12 is fundamental to democratic governance, and a
13 transparent election process demands public
14 oversight.

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

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

17 Nearly all distrust of election
18 machinery rests on the lack of transparency of
19 the software used to administer elections. How
20 does this software convert screen touches or
21 marks on paper to votes for a particular
22 candidate? How does this software record and
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1 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

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1 should simply change the Appendix A application
2 to require, as a condition of registration, that
3 manufacturers agree to disclose all evidence
4 supporting the merchantability or fitness of use
5 for systems to administer elections, and the
6 information needed to identify a system.

7 The imperative of transparency
8 extends to the testing labs as well. The
9 Commission has delegated its testing authority
10 under HAVA to private labs without requiring, or
11 even allowing for, public oversight of those
12 labs. However, democracy requires that those
13 who are tasked with the responsibilities of
14 government be accountable to the public. As a
15 condition of registration, Appendix B should
16 require that the testing labs agree to make
17 their methods, work and results transparent
18 through public disclosure to the Commission. At

19 the very least, those materials that the
20 Commission does demand of the testing labs
21 should be delivered directly to the Commission
22 by the labs and not through the manufacturers.

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

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

20 Similarly, the Commission could
21 sponsor expert usability/accessibility testing
22 to ensure that certified voting systems intended

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1 to meet Section 301(a)(3) actually do allow
2 disabled Americans to vote privately and
3 independently. Rather than merely performing
4 the functionality testing required for
5 certification, additional testing could serve to
6 improve and refine the subsequent versions of
7 the VVSG. At the least, independent security
8 experts, for example, be involved in developing
9 test suites, reviewing test plans and reports.

10 Finally, the draft manual is lacking
11 any exercise of the authority granted to the EAC

12 under HAVA, Section 231. Nowhere is there a
13 penalty clause for any violation of phrases like
14 the manufacturer shall, or the manufacturer
15 shall not. What is the penalty if a
16 manufacturer represents a system as certified
17 when it is not? What happens when a system
18 certified under the emergency rules is not later
19 submitted for proper certification? The EAC
20 could tie penalty statements for both
21 manufacturers and test labs to suspension of
22 registration and decertify all systems from

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1 suspended manufacturers.

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

14 Thank you, very much.

15 CHAIRMAN DEGREGORIO: Thank you,
16 Mr. Stewart.

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

19 VICE-CHAIR HILLMAN: Thank you,
20 gentlemen. Let me pose my first set of
21 questions to Mr. Shamos. I want to get a couple
22 clarifications from your testimony. Could you

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1 define for me what you mean by federal testing?
2 You say in your presentation that your table is
3 littered with the dead bodies of voting systems
4 that passed federal test. And I want to know
5 what you mean by federal testing?

6 MR. SHAMOS: Currently, ITA testing
7 to federal standards by an accredited
8 laboratory. And there is a requirement in
9 Pennsylvania, a system will not be tested for
10 certification unless it has a certification
11 letter from a federally qualified lab. So
12 Pennsylvania has adopted the federal standards
13 and not the entire NASED process.

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

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

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

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

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

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

17 VICE-CHAIR HILLMAN: You then talk
18 about that these federally qualified systems.
19 I'm not sure I agree with what you mean by
20 federally qualified is approximately 50 percent,
21 when it should have been well over 90 percent.
22 You aren't specific about what things didn't

1 pass, so could you be more specific now, share
2 with us some specifics?

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

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

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

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

15 MR. SHAMOS: I have done examinations

16 for six states. By far, the bulk of the
17 stations were for Pennsylvania and Texas. Texas
18 pass rate -- remember, my testing in Texas ended
19 in 2000, and so we didn't have the 2002
20 standards at that time the pass rate in Texas
21 was lower because of the general nature of the
22 way Texas does things. Individual counties were
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1 allowed to build their own voting systems. They
2 didn't actually have to buy one from a
3 manufacturer, so the variety of things we saw in
4 Texas was so great that the failure rate was
5 high, but they were not tested to federal tall
6 standards.

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

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

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

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

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

7 MR. SHAMOS: We're talking about
8 historical use of terminology. It is in common
9 use to say the system is federally qualified.

10 VICE-CHAIR HILLMAN: There is one
11 place where I take exception with you. There is
12 a place in the voting process where secrecy and
13 voting do mix, and that is the secrecy of the
14 ballot.

15 MR. SHAMOS: Guilty as charged.

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

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

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

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

22 MR. STEWART: That's why I didn't
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1 include it in my oral testimony here.

2 VICE-CHAIR HILLMAN: Well, you know

3 your written testimony is for the record, so I
4 want to make sure the record is very accurate
5 and complete about this. Some of the things you
6 described are some things that America voters,
7 they don't want to necessarily stand up in the
8 polling place in front of several hundred people
9 and say who I am voting for.

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

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

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

19 MR. STEWART: What I was talking
20 about with transparency, just go ahead and
21 require that all this material become public
22 information. Don't wait for the legislature to
200

1 act to make that requirement. You have the
2 power within Section 231 to simply say that if
3 you want to play in this area, public comment of
4 election administration, you're going to have to
5 make that information available. And I think
6 that the way that trade secrets are treated in
7 Section 10 is too differential to the commercial
8 interests really of the vendors. As one of the
9 earlier panelists mentioned, the trade secrets
10 confidential provision sort of covers
11 everything. It is blanket statements to take
12 everything out of public view, and I'm not sure
13 that's necessarily all because of trade secrets.
14 Some of that information might be commercially
15 damaging to the vendor, and I think that you
16 should not in the business of protecting the
17 vendor's commercial interests. You should be
18 working for the public interest.

19 VICE-CHAIR HILLMAN: Do you have

20 anything specific? I know you qualified it
21 might be commercially damaging. Do you have
22 anything that would suggest that, in fact, that
201

1 is why?

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

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

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

11 And to the extent that information is
12 going to be part of the public record, the fact
13 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
203

1 worth building on?

2 MR. SHAMOS: Yes. What I meant when
3 I said that the system is broken, is it's not at
4 a stage where states can meaningfully rely on
5 the results of the testing process. The reason
6 I know that is I look at these systems that have
7 passed through the testing process, and they
8 immediately fail. So something's wrong
9 somewhere. I can't point the finger where it
10 might be because it is not okay. I think there
11 are probably a half dozen changes, if you let me
12 change half a dozen tenses in the manual, the
13 manual would get a lot better. It's not that
14 you have to throw the whole book out. A lot of
15 the processes reveals an appeal that's all fine.
16 It is the fundamental philosophies stated in the
17 manual that really have to be implemented.

18 VICE-CHAIR HILLMAN: And I know that
19 we will get those half dozen comments in writing
20 before the end of the month.

21 MR. SHAMOS: Yes.

22 MR. STEWART: Commissioners, would it
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1 be out of order slightly, there were a couple
2 questions that you asked of earlier panelists
3 which I would love to have the opportunity to
4 give my perspective on at some point.

5 CHAIRMAN DEGREGORIO: We will give
6 you that, but let's go to Commissioner Davidson.

7 COMMISSIONER DAVIDSON: Mr. Stewart,
8 you talked about one of the really interesting
9 things that I wanted to ask you at the very end
10 of your testimony to Commissioner Hillman.
11 We're aware that you did a lot of studies
12 investigating issues related to problems in the
13 election concerning voting systems. I see
14 percentages attributed from your organization
15 concerning these malfunctions or possible
16 problems with the election equipment.

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

22 MR. STEWART: I'd have to know 205

1 specifically what you were speaking of. So I
2 can't say because I don't know exactly what
3 numbers you're talking about. Remember that
4 we're a bit of an ad hoc organization.
5 We exist because there are American citizens in
6 counties and states across the country concerned
7 about the accuracy and integrity of elections,
8 and are working devoting on an entirely
9 volunteer basis, taking time out of their life
10 because they are concerned about elections, they
11 are concerned about democracy.

12 So there is going to be some
13 variation amongst the kind of reports that are
14 done. I try not to publish anything that I
15 don't feel pretty confident about. That's sort
16 of one level where they come from. But then I
17 also repost studies from academic sources. We
18 have a technical voting systems advisory board
19 that includes people that are actually software
20 testers that are involved, and in those cases, I
21 am relying on their technical skills. So I
22 don't know if I could mention something 206

1 specifically.

2 COMMISSIONER DAVIDSON: One of the
3 questions I have is whether or not it is
4 actually a machine problem or was it an
5 individual that was not following the procedure.
6 Elections, as we said, well, millions of people
7 are involved. Did you look into it at all to
8 see if it was a problem because of error or is
9 it actually a machine issue?

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

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

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

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

15 I have been a poll worker, and I have
16 tried to find things out on Election Day, and I
17 can't get through to my county official. Just

18 give me resources. We want to have smooth
19 elections. We want to work together as much as
20 possible.

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

9 If I'm here, this must be testimony
10 to the fact that I have succeeded to some extent
11 in conveying the notion that our object here is
12 to help you make elections better, to help to
13 work with election officials in achieving the
14 sort of transparency, oversight, and public
15 confidence that we feel is still lacking,
16 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
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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

11 collect the money?

12 Is there an idea that you have that
13 you can share with us, because we hear this a
14 lot. We were very interested in it, so we did a
15 lot of research. Do you have other ideas for
16 us?

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

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

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

18 Third, would be you have somebody
19 create a nonprofit organization, and you impose
20 a requirement for the a vendor or manufacturer.
21 And when a manufacturer wants to be examined, he
22 pays into this nonprofit organization what the
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1 examination fee is going to be, and the trustees
2 of the nonprofit organization pay the vendor,
3 pay the vestal. And the decision of which
4 vestal to use is made by the EAC on either some

5 national or random basis. More than that, the
6 public is assured that they can't be gained by
7 the manufacturers.

8 COMMISSIONER DAVIDSON: My last
9 question to you, when we were reviewing and
10 going through your testimony, I guess there was
11 issues that obviously we felt that was a little
12 heavier than we looked at. Fifty percent of
13 the equipment you tested, you said, didn't pass.
14 At the time, you recognized there was a problem.
15 Did you go back to the committee with NASED and
16 comment to them of the issues that you felt was
17 really a problem at that time?

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

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

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

19 MR. SHAMOS: Certainly. The problem
20 is, if they fail, they can't ask for a retest.
21 What they have to show is that they have made

1 whatever it was that failed. Then they can come
2 back for a retest. As long as they keep making
3 changes and pay the fee for the retest, also, no
4 limit. Meanwhile, they are not certified.

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

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

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

13 CHAIRMAN DEGREGORIO: Dr. Shamos, my
14 colleague, Commissioner Hillman, I thought
15 raised an excellent point in characterization of
16 the federal testing, because I think it's
17 important we get questioned. Certainly, I do,
18 as the chairman, from the media, about this
19 previous federal certification of equipment.
20 And I have to go and explain it is a NASED
21 certification, but it is not a Federal
22 Government certification, this program, there is
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1 no question about it. You are familiar with the
2 NVLAP program of NIST?

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

6 CHAIRMAN DEGREGORIO: Sure.

7 MR. SHAMOS: An analogy was sited in
8 several cases to FCC testing, FAA testing, etc
9 and I think the analogy is not applicable, and
10 the reason for that is, if I have a particular
11 fear of a telephone, I don't have to use that
12 particular telephone. I can go buy a different
13 phone. If I think that flying is unsafe, I
14 don't have to fly, I can drive. But I don't

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
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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.

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1 CHAIRMAN DEGREGORIO: But you examine

2 the source codes, right?

3 MR. SHAMOS: Yes. For reasons known
4 better to the Secretary of the Commonwealth than
5 to me, he has not chosen to make the source code
6 public. I conduct an examination of the source
7 code, not at the level that the ITAs are
8 supposed to.

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

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

20 MR. SHAMOS: I will agree there is a
21 semantic difference as to what occurs physically
22 during the public examination and the things I
219

1 get to look at privately, which I deeply regret
2 they are private.

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

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

10 CHAIRMAN DEGREGORIO: I know that you
11 also provided specific comments on specific
12 sections of our program and we certainly
13 appreciate that. Time is short. I need to
14 focus. Mr. Stewart, I certainly appreciate you.
15 You have arrived, you are here in front of us
16 and we approach that because, you know, we know
17 there's many Americans out there that have
18 concerns about these systems. We certainly

19 recognize that. And you certainly bring those
20 concerns not only to us, but to others around
21 the country, and I know my colleagues have
22 talked to you about how you work with state and
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1 local, and you have talked about your Poll
2 worker for Democracy program. You all send
3 e-mails to all of us and share with us a survey,
4 surveys. Are you surveying for this election,
5 are you going to be surveying for this election?

6 MR. STEWART: No, I am not exactly
7 sure what you mean by a survey, but we do have a
8 mechanism for feedback.

9 CHAIRMAN DEGREGORIO: So your members
10 are going to be working, they are going to get
11 you some kind of feedback?

12 MR. STEWART: First of all, we're not
13 a membership organization but, basically, what
14 we've done is encourage people, in terms of Poll
15 Workers for Democracy, which we're doing
16 together with other organizations, but we have
17 encouraged them to sign up with their county
18 election boards, do the training. We're just
19 there as an additional resource.

20 CHAIRMAN DEGREGORIO: So your folks
21 are going to serve as a resource but they are
22 not going to be working as poll workers and
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1 serve another hat?

2 MR. STEWART: No. They have got
3 enough to do assisting poll workers.

4 CHAIRMAN DEGREGORIO: Because I have
5 heard about that being done by some
6 organizations, because, it does concern me if
7 people are working as a poll worker, then going
8 to be looking at serial numbers, voters have to
9 be served.

10 MR. STEWART: Right.

11 CHAIRMAN DEGREGORIO: What do you
12 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
222

1 be happy to talk about it more length, but in
2 general, to not be dismissive. I think for a
3 long time administrators were in the dark. It
4 was only in 2000 that most people started to
5 think about the election administration process
6 at all. So it's a steep learning curve, but
7 there's a lot people that have made that step,
8 and are very concerned, and don't like being
9 dismissed, as, well, you just don't know how
10 complicated this is, because a lot of us do
11 actually know.

12 That would be a general statement.
13 Making as much available on a web site,
14 secretaries of states web site, county web site,
15 making as much information as possible available
16 there, so that there is no sense that something
17 is being obscured or hidden, or thinking that no
18 one's going to be interested in that, because I
19 am someone who is interested in those sort of
20 things, and we find it frustrating when it is
21 difficult to find things that should be publicly
22 available. So error on the side of too much up
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1 on that web site. I have had very good
2 experiences in contacting states and local
3 election officials by and large, particularly
4 New Mexico. They were remarkably helpful to me.

5 MR. SHAMOS: And make it openly

6 transparent.

7 DIRECTOR WILKEY: Thank you,
8 Mr. Chairman. I have a question for each of you
9 and I will set it up as best I can. First, Dr.
10 Shamos, everybody knows I have been around this
11 stuff for a long time. I have admired your work
12 over the years and considered you, considered
13 that work a great help. You've been doing in a
14 number of the states. As you know, we asked you
15 to participate as one of our peer reviewers. We
16 hope that you will find to do that because we
17 need people like you to work with us to make
18 this better, which leads to my question.

19 I am really puzzled knowing the kind
20 of work you do, how sincere you are, how in
21 depth you are about it, have you ever taken the
22 time to detail these problems that you clearly

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1 state here and go back to some of the
2 laboratories and say, hey, guys, you missed this
3 stuff, what's going on, what's the problem here?
4 Because I am really puzzled by that, knowing the
5 level of consistency and type of work.

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

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

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

17 DIRECTOR WILKEY: Thank you.

18 Now, Mr. Stewart, having done a bit
19 of advocacy, I have a lot of respect for you but
20 I want to touch on something that I think is
21 very important, and where we're, again, 11 days
22 before the election. Before I got into this

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1 business, a long time ago, I was an elementary
2 teacher. We had an exercise we did with the
3 kids where you divide them up, put the blue eyes
4 here, and brown eyed kids over here. Over a
5 period of time of daily exercises and
6 discussion, we had the brown eyed kids believing
7 that the blue eyed kids were smarter and
8 brighter than they were on a daily basis.
9 We're almost seeing that on a daily basis in
10 terms of the reliability of the voting systems
11 in this country in that every time we turn on
12 the TV, no matter what time of day, we're told
13 that we can't believe and trust these systems.
14 You have seen a lot about what's going on out
15 there, and I trust your judgement.

16 But have you drawn any conclusions of
17 what percentage you think are real serious
18 problems we need to focus on or what are
19 problems related to the process, a poll worker,
20 somebody that don't follow procedure, a voter
21 makes a mistake, a problem with transport. Have
22 you drawn any conclusions in that area so that

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1 we can begin to decipher what is real, what is
2 not.

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

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

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

12 CHAIRMAN DEGREGORIO: I appreciate
13 that, because I think it's important for people
14 to understand. I voted for the first time on a
15 DRE machine, just a few weeks ago. Thank you
16 very. We appreciate the comments and your

17 written testimony. Feel free to add to it. If
18 you have any more suggestions before deadline
19 Tuesday at five o'clock. Thank you very much.

20 Now, we have our last period for the
21 hearing today is our public comment period, the
22 public, anyone has the opportunity to testify

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1 before us, anything they wanted to comment upon
2 regarding this certification program that we
3 have put forth, and we only had one person sign
4 up, and that's Nancy Wallace.

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

8 Did you come all the way here?

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

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

15 MS. WALLACE: I will do my best. I
16 apologize if I speak quickly. I thank you for
17 your patience today. Thank you, very much, for
18 the public participation. I am testifying and
19 my remarks will be supplemented by more detailed
20 comments submitted by Tuesday. I am a
21 volunteer, but I requested the privilege of
22 representing the organization today because of

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1 my professional capacity. I work for Computer
2 Scientists Corp, CSC, a supervisor of a team of
3 three software testers. I work every day with
4 the challenges of software testing. Section 1.4
5 one of its purposes it to devote increase voter
6 confidence in the use of voter systems. Given
7 the current crises in our voting systems and the
8 EAC process under which NASED were certified,
9 that is an admirable goal. Public confidence

10 can only be increased by making the process as
11 transparent to the public as possible. The
12 public must have access to the relevant
13 information on which certification decisions are
14 made to parties in that process.

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

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

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

3 In our written additional testimony,

4 we will make constructive suggestions as to how
5 the current draft be revised to accomplish that
6 goal. Sorry for the speed reading.

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

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

15 VICE-CHAIR HILLMAN: So moved.

16 COMMISSIONER DAVIDSON: Second.

17 CHAIRMAN DEGREGORIO: Motion to
18 adjourn the meeting second. All signify by
19 saying I. Opposed. Guys, the meeting is
20 adjourned. Thank you.

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

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2 CERTIFICATE OF COURT REPORTER

3

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

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Jackie Smith

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