

**United States Election Assistance Commission  
Public Meeting**

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Tuesday, September 21, 2010

VERBATIM TRANSCRIPT

The following is the verbatim transcript of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Tuesday, September 21, 2010. The meeting convened at 9:05 a.m., EDT. The meeting was adjourned at 12:00 p.m., EDT.

**PUBLIC MEETING**

CHAIR DAVIDSON:

Good morning everybody. We'll start the meeting and call it to order. Would everybody please put their telephones on silent or turn them off, either one, and would you please join me with the Pledge of Allegiance?

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[Chair Davidson led all present in the recitation of the Pledge of Allegiance.]

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CHAIR DAVIDSON:

Thank you. Next, I'll turn to Tamar Nedzar our Associate General Counsel to call roll please.

MS. NEDZAR:

Commissioners, please respond when I call your name. Chair Donetta Davidson.

CHAIR DAVIDSON:

Present.

MS. NEDZAR:

Commissioner Gracia Hillman.

COMMISSIONER HILLMAN:

Here.

MS. NEDZAR:

Commissioner Gineen Bresso.

COMMISSIONER BRESSO:

Present.

MS. NEDZAR:

Madam Chair, a quorum is present.

CHAIR DAVIDSON:

Thank you. If you would look at our agenda, please, and we'll look it over and make sure that it's in proper order, and I'll ask for a motion.

COMMISSIONER BRESSO:

I have a question regarding the agenda.

CHAIR DAVIDSON:

Okay.

COMMISSIONER BRESSO:

Under new business, the second item that says, "Consideration of VVSG 1.1 Policy Issues Updates," are -- do you mean consideration where there's going to be a vote taken, or just an update on the potential policy decisions we have regarding the VVSG?

CHAIR DAVIDSON:

I think we'll be more comfortable just doing the -- reviewing the material, and then we can do -- and I wanted to do that in public, where it could be really discussed amongst all of us openly and then we take a tally vote later.

COMMISSIONER BRESSO:

Okay, that's fine, thank you.

COMMISSIONER HILLMAN:

Move the agenda.

COMMISSIONER BRESSO:

I second.

CHAIR DAVIDSON:

All those in favor say aye.

[The motion carried unanimously.]

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CHAIR DAVIDSON:

Thank you. This morning we appreciate everybody being in attendance, whether it's in person or via the webcast. And we're pleased to announce that we have a General Counsel starting, I believe, the 27<sup>th</sup> of September. His name is Mark Robbins and he has been selected. He has 20 years of experience in public policy, federal administration law and executive management. We look forward to him joining us and working with us. And you could find more information about him on our Web site at [www.eac.gov](http://www.eac.gov).

Speaking of the EAC Web site, as we've said before, it has been redesigned and I encourage everyone to visit it. Sign up for the weekly newsletters or our update program area. You can -- the news line goes out weekly, and then you can subscribe to what we call the really simple, I think it was synthenatics or something like that, all of a sudden I've lost the last word, but it's the RSS feedback. And you can receive immediately when we have posted anything new up on the Web site, it will come to you directly. You can choose that in one area of our office, whether it's research and development, or if you want to go into actually the testing and certification portion of our office, or Commissioner's newsletters. Whatever you really are interested in you can get it or you can get everything. So, we'd like for you to really go in there and look at it.

Also we'd like for you to look at our information and give us feedback on it. If you are happy the way it's lined up and everything, let us know. If you're not, we'd like to know that also.

So, I want to remind the public, also, that September is National Registration Month. That's been up on our Web site all month. And we'd like for you to visit and get more information on how you can register within your State, and also you can use our National Voter Registration Form that is up on the Web site.

Do my colleagues have any announcements this morning?

COMMISSIONER HILLMAN:

I just want to tap onto the last announcement you made about September being National Voter Registration Month. And hopefully, EAC will be reminding people that while voter registration laws vary by State, some States you can register up until Election Day, but many States close elections by the end of September, or at least 30 days before the election. So, we should just be sure to encourage the public, members of the public to make sure they're registered to vote and to check what their State law requirements are, so they don't miss the opportunity.

CHAIR DAVIDSON:

Very good. Yes Commissioner Bresso.

COMMISSIONER BRESSO:

I'd like to also make a point on Voter Registration Month. I think it's also -- while it's important for those who haven't registered or wish to register to do so, I also want to remind those who are registered that they should check their voter registration status, because sometimes polling locations change and polling hours change. So,

I would encourage everybody to be aware of what your State laws are and where you should go on Election Day to vote, or even if your State does offer early voting opportunities.

And I'd like to mention two other points. One, earlier this month I traveled to Tbilisi, Georgia, to participate at the 19<sup>th</sup> Annual Association of European Election Officials Conference. The focus of the conference was on developing accurate voter registration lists. And it was interesting to learn the similarities between the United States which -- and the differences between the United States, which is a more decentralized system and the European countries that participated, who have more of a centralized election system.

And also, I'd like to highlight, on Primary Day on September 14<sup>th</sup>, myself and two other staff had traveled to Maryland and the District of Columbia and observed several polling locations and went to the respective Boards of Elections. In the State of Maryland, myself and two of my staff members observed parallel testing in progress on the day of the election. And in D.C. the one thing I wanted to highlight what we observed was curbside voting, that they were offering at the polling locations. The one thing that I did find in common between both Maryland and Virginia is that the poll workers were very enthusiastic and they did love using the electronic poll books.

So, I would like to take this opportunity to thank the poll workers that served on that day and to all poll workers that will be serving on Election Day and have served in the past. Thank you for your service.

CHAIR DAVIDSON:

Thank you. We'll go ahead and get started in old business, then. And the first item is the minutes from the 18<sup>th</sup> of August of our public meeting. And I would like a motion to just approve the minutes, and then we'll come back and approve the public hearing. They are separate.

COMMISSIONER HILLMAN:

Move approval of the minutes of the August 18, 2010, public meeting.

COMMISSIONER BRESSO:

I second.

CHAIR DAVIDSON:

All those in favor?

[The motion carried unanimously.]

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CHAIR DAVIDSON:

Then, we'll do the public hearing that was held the same day that afternoon of the 18<sup>th</sup> of August. And that was held -- both of these meetings were held in Orlando at the Hyatt Regency Grand Cypress, so that everybody is aware of that.

COMMISSIONER BRESSO:

I move for adoption.

COMMISSIONER HILLMAN:

Second.

CHAIR DAVIDSON:

All those in favor?

[The motion carried unanimously.]

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CHAIR DAVIDSON:

Very good. I'll now turn to Tom Wilkey, our Executive Director for his report for this month.

MR. WILKEY:

Thank you Madam Chair. And I want to thank everyone for being here today.

As Commissioner Bresso mentioned, we all know, last Tuesday was big primary day and we visited polling places in New York, my home State, and sites around D.C. and Maryland, all of which had implemented many new processes and technology.

We were impressed by the cooperation and the dedication of the many people required to make an election successful; precinct captains, election workers, poll workers and voters.

Even though I've spent a long career in election administration, I'm still in awe when I observe a production of this magnitude. Of course, for most of us in elections, the primary is just a warm-up for the general election, which is the central focus for all of us now. And I also want to echo while I have the opportunity what's already been mentioned about Voter Registration Month. I think it's important, particularly, as Commissioner Bresso pointed out, that everybody check their voter registration status, make sure that when they get a notification from the Board of Elections, they look at it. And I know, in my particular case, I received a notice of a change in polling place. Had I been here and not voted early voting, I would have gone to the wrong polling place. So, it's important that when we get a notice from the

Board of Elections, it contains valuable information and we should be looking at it.

In regard to our work, EAC has had a very busy several weeks since our last meeting.

The Commission recently approved a final version of the UOCAVA Pilot Program Testing Requirements. The final version is posted on our Web site along with a document describing how each of the comments were resolved. We've issued roughly 8.6 million in FY 2010 funds and 916,000 in 2009 funds. And the States that have received that funding, which is up on our Web site, Indiana, Kansas, South Dakota, Texas and Washington State. This brings the total of disbursed payments to 81.2 million for 2008, 58.4 million for 2009 and 26.2 million for 2010. We now have \$2 million in grant funding available to develop and document processes and best practices for voting system pre-election logic and accuracy testing and post-election audits. The deadline for the grant completion is February 15, 2011. We encourage anyone who is interested to download the grant notice from our Web site. We'll be publicizing this opportunity in the coming days and weeks to ensure we get a broad and diverse set of qualified applicants.

The Commission has held six tally votes since our last meeting to approve UOCAVA Pilot Program Testing Requirements, approve the renewal charter for the Technical Guidelines Development Committee, and publish notice of the charter renewal in the *Federal Register*, close the September 1, 2010, meeting where the EAC discussed the appointment of a General Counsel, approve the appointment of a candidate for EAC's General Counsel

to a term of four years, approve a cover letter which will accompany the report Free or Reduced Postage for the Return of Voted Absentee Ballots, and approve the Notice of Funding Availability for the 2010 Voting System Pre-Election Logic and Accuracy Testing and Post-Election Audit Initiative.

Under updates, as a reminder, we are seeking public comment on the proposed changes to the NVRA regulations through November 23, 2010. Information about the proposed changes is available on our Web site, along with instructions on how to submit a comment. As we've stated, no changes to the rules will take effect before the November election.

We recently provided a certification update for the ES&S Unity 5.0.0.0 which includes a request for ES&S to change voting system test labs for the remainder of that system test campaign. And as part of that, a request from ES&S related to source code review for the Unity voting system.

We also want to thank everyone who has signed up to receive automatic email alerts from our Web site. And as the Chair mentioned, our new redesigned Web site has certainly gotten a lot of attention and a lot of praise, and we're very pleased with that. Nearly 200 people have signed up for the alerts. It's an easy and convenient way to stay on top of the news. You can basically pick out whatever kind of information you want to get, and we hope more and more people will find that tool useful.

That is my report, Madam Chair.

CHAIR DAVIDSON:

Thank you. Do we have any questions for Mr. Wilkey this morning?  
Commissioner Hillman?

COMMISSIONER HILLMAN:

I can't miss the opportunity to ask Mr. Wilkey some questions.

People think that Federal Government is inherently slow about a lot of things, and you announced that the deadline for the grant competition for logic and accuracy is February 15, 2011.

Maybe a word explaining why such a prolonged deadline.

MR. WILKEY:

Well, certainly we wanted to have jurisdictions, both State and local jurisdictions, a long opportunity. We didn't want to catch them in the middle of this busy election season, you know. We just had primaries in a large number of States. We're going into the general election. After the general election it's about a 30-day process to do their recanvass, to do any audits that they're doing, and then you get into the December holiday mode. So, we wanted to make sure that we had some good, solid applications, and in order to achieve that we thought making it a later time period would be helpful.

And I agree with that. I think we would have been able to get it out earlier, that deadline whittled down a little earlier, but we're catching people, election officials in particular, right in the middle of their busy season.

I think also that there may be some things coming out of it, maybe States and jurisdictions using new, updated pre-election and logic accuracy protocols. And this would give them an opportunity to be able to use that as part of their application process. Also,

there are a number of States this year that are using an audit process for the first time. That will also give them an opportunity to do that post-election. And so we want to be able to give them enough time to be able to do the grant processing and have enough time to get it into us.

COMMISSIONER HILLMAN:

Great, thank you.

CHAIR DAVIDSON:

Okay, Commissioner Bresso.

COMMISSIONER BRESSO:

I have a question. Regarding the information that ES&S has with the certification update...

MR. WILKEY:

Um-hum.

COMMISSIONER BRESSO:

...do their requests impact, if at all, the timeframe for certification are you aware?

MR. WILKEY:

No. As a matter of fact -- and I'm glad you asked that question, Commissioner Bresso, because I don't want to leave the impression that we just allow vendors to willy-nilly change test labs whenever they so desire. We put this provision in our voting system protocols to make sure that when we had a request to do that, that we go through a lengthy process finding out why they want to do that.

And what we've tended to, and you know probably Mr. Hancock could elaborate if I'm not accurately describing this, but I

think most of the time they're trying to get a product through, the other lab is very busy, can't get them in the queue to get them out fast enough, so they'll make a request to change labs. In this particular case, I have a feeling that that's what happened here. And as part of that, because the other lab had done some prior testing on source code, they need permission from us as part of our process to be able to use that testing -- the new lab to be able use that testing. We want to make sure that, as I said earlier, vendors are not just jumping back and forth from labs, perhaps because they may not be getting the kind of response that they wanted. But what we're seeing, I believe, is that they'll take a product in, they'll find out that the queue is rather long at a lab, and they'll want to change on that basis to be able to get their product out faster. And if it's an update, they want to get that to their jurisdictions faster. So, they will make a request, we will look at it, we'll look at it very carefully, and approve it if we find there's nothing amiss.

COMMISSIONER BRESSO:

Okay. And just for clarification, when you say "we approve it" you mean yourself, in your capacity as the Executive Director, or does the Program Director?

MR. WILKEY:

It is the Program Director who does that.

COMMISSIONER BRESSO:

The Program Director makes that decision?

MR. WILKEY:

Um-hum.

COMMISSIONER BRESSO:

Okay, thank you.

CHAIR DAVIDSON:

Okay. Excuse me?

COMMISSIONER HILLMAN:

Before we -- well before we go to the next...

CHAIR DAVIDSON:

Um-hum.

COMMISSIONER HILLMAN:

...is that where you're moving to now?

CHAIR DAVIDSON:

Um-hum.

COMMISSIONER HILLMAN:

Okay. As I think about some of the information the Executive Director just reported on and look at the items coming up on this agenda, I'd like to recommend that EAC, for our December meeting, invite the vendors in to talk about their experiences with the election and with our testing and certification process. It has been a long, long time since we've had a discussion with the vendors, and I really think December might be a good time to do that if we could.

CHAIR DAVIDSON:

I know Mr. Hancock has a meeting with the vendors scheduled in October?

MR. HANCOCK:

Next week.

CHAIR DAVIDSON:

Next week, next week, right around the corner, next week. And so, he's continuing to work with them, so we can definitely keep that in mind.

COMMISSIONER HILLMAN:

Yeah, I mean the -- it's really great that the Executive Director and Mr. Hancock and members of his staff stay in touch with the vendors, but it's been a long time since the Commissioners have had a chance to talk with the vendors. And because of our ex parte policy, it makes it very difficult to have conversations with vendors about what's going on from their perspective, to ask them questions to get clarification. And I'd really like that opportunity.

CHAIR DAVIDSON:

And after the election -- maybe we can do an after-the-election you know review of the election itself and have not only vendors in, but some of the election people, too. So, we'll look at how we can really form that meeting to be a worthwhile meeting.

COMMISSIONER HILLMAN:

Thank you.

CHAIR DAVIDSON:

Um-hum, okay, I'll start new business then. And this morning we're going to have a discussion on Quality Monitoring Program, which is to talk about vendors and our process and everything, but creating a successful partnership. We're very pleased to discuss today the Quality Monitoring Program, which is part of our voluntary -- our mics are too far from the people to hear the sound, so we need to readjust our mics, guys.

COMMISSIONER HILLMAN:

Did they miss everything we just talked about for the last 30 minutes?

CHAIR DAVIDSON:

I don't know. No, they didn't, but we'll do that. See, we're very transparent.

MR. WILKEY:

It's like church, Madam Chair.

CHAIR DAVIDSON:

When we get a note, we announce what it is.

MR. WILKEY:

They're all sitting in the back of the room, you know.

COMMISSIONER HILLMAN:

Right.

MR. WILKEY:

Nobody is occupying the first row.

COMMISSIONER HILLMAN:

We'll just make sure to put the speakers back there, so they...

CHAIR DAVIDSON:

Is this better? Okay, so back to where I was at.

Today, I'm very pleased to discuss the EAC's Quality Monitoring Program, which is part of the voluntary -- or the Voting System Test and Certification Division. The Monitoring Program was established to make sure that voting systems used in the field are, in fact, the same as the EAC has certified. It also provides valuable information about voting systems' performances, including anomalies, to election officials throughout the nation regardless of whether their State participates in the program. It also informs the

public about how EAC certified systems are performing. The information is distributed through our system advisory alert and it is available on our Web site.

Our focus today will be on the successful collaboration between EAC and Cuyahoga County to address the recent voting system issue. We begin with the Executive Director of Voting Systems and Testing Certification, Brian Hancock. Then, after Brian will speak he will introduce his guest, Jane Platten from Cuyahoga County Board of Election Directors. We'll wait until after both of them have discussed their issues that they -- their presentations this morning before we start asking questions.

Brian, I'll turn it over to you and you can also introduce your guest. Thank you.

MR. HANCOCK:

Thank you Madam Chair. As you said, before I begin my testimony I would like to introduce my co-panelist here this morning, it's Jane Platten. And Jane, as you said, is Director of the Cuyahoga County Board of Elections, which is Cleveland, Ohio. Jane is a lifelong Clevelander and graduated from John Carroll University in Cleveland. She was appointed Director of the Board in 2007 after serving as the interim Director for several months prior to that. Jane has extensive experience at the agency as an administrator and has held leadership roles in community outreach, the poll worker department, procurement and operations, and human resources. She created, managed and implemented a \$1 million countywide voter education program to introduce the new election system conversions and reorganized operations to execute a new,

comprehensive poll worker recruitment and training program. We are very pleased that she's with us today. And as I will talk about in my testimony upcoming, we've been very pleased to work with her in the previous couple of months.

Madam Chair, Commissioners, Executive Director Wilkey, Counsel Nedzar, thank you once again for allowing me to testify this morning. Most of my previous testimony to you regarding the Testing and Certification Program has focused I would say, almost exclusively on the process behind getting a voting system tested by a voting system test laboratory and eventually certified as having met the requirements contained in a specific set of Federal Standards or Guidelines.

While this process is unquestionably a critical component of the EAC mandate under the Help America Vote Act, my ultimate goal is for the technical certification related activities, themselves, to someday become the most routine and yes, believe it or not, the easiest part of our process. I feel that the real value added in our certification program, and where we should focus resources in the future, is working with State and local election jurisdictions to investigate and correct problems and anomalies found with fielded EAC certified voting systems through our Quality Monitoring Program.

As outlined in our *Testing and Certification Program Manual*, the EAC has three primary tools for assessing the level of effectiveness of the certification process, and then, of the compliance of fielded voting systems. These tools include manufacturing site reviews, fielded system reviews, the means of

receiving anomaly reports from the field. Today, my testimony will focus on the second of these tools; fielded system review.

I'd first like to discuss the process with you, and then, to discuss our specific work with elections jurisdictions, including Cuyahoga County.

For fielded system review and testing we can, upon invitation or with the permission of a State or local election authority, conduct a review of fielded voting systems. This review may include the testing of a fielded system if deemed necessary. Any anomalies found during this review and testing will be provided to the election jurisdiction, to the voting system manufacturer and to any other jurisdiction using the affected system.

Ultimately the information the EAC gathers for manufacturing site reviews, fielded system reviews, and anomaly reports is used to improve the program and to ensure the quality of voting systems. The Quality Monitoring Program is not designed to be punitive but to be focused on improving the process. Information gathered is used to: Identify areas for improvement in our Testing and Certification Program; to improve manufacturing quality and change control processes for the manufacturers; to increase voter confidence in technology; to inform manufacturers, election officials, and the EAC of issues associated with voting systems in a real-world election environment; to share information among jurisdictions that use similar voting systems; to resolve problems associated with voting technology or manufacturing in a timely manner by involving manufacturers, election officials and the EAC in the problem solving process; to provide feedback to the EAC and

the Technical Guidelines Development Committee regarding issues that may need to be addressed through a revision to the Voluntary Voting System Guidelines; and finally, if warranted, to initiate an investigation when information suggests that potentially decertification of a voting system may be warranted.

An informal inquiry is the first step taken when information is presented to the EAC that suggests that a voting system may not be in compliance with the applicable voting system standard or the procedural requirements of our Program Manual. The sole purpose of the informal inquiry is to determine whether a formal investigation is warranted. The outcome of the informal inquiry is limited to a decision on referral for investigation.

Informal inquiries are initiated at the discretion of the Program Director. They may be initiated any time the Director receives attributable, relevant information that suggests a certified voting system may have issues that could lead to decertification.

This information may come from State and local election officials, voters, or others who have tested a given voting system. The Program Director may notify a manufacturer that an informal inquiry has been initiated, but such notification is not required at this point.

As I stated, the informal inquiry process is limited to that inquiry necessary to determine whether a formal investigation is required. In other words, the Program Director will conduct an inquiry sufficient to determine that the information obtained is credible and that the information, if true, could serve as a basis for decertification. The nature and the extent of the inquiry process

will vary depending on the source of the information, of course. Information provided by election officials or by voters who've used the voting system potentially may require EAC staff and technical experts to perform an in-person inspection or make inquiries of the manufacturer. The Program Director may make two conclusions from information gathered as a result of this informal inquiry. One, refer the matter to the Executive Director for a formal investigation; or, two, to close the matter without additional action or referral.

Now that I've talked a little bit about the process behind all this, let me talk about our recent work with Cuyahoga County. The DS200 precinct count optical scan voting device fielded in Cuyahoga County, Ohio, is part of the EAC certified ES&S Unity 3.2.0.0 voting system. During pre-election logic and accuracy testing, L&A testing, prior to the May 4, 2010, Primary Election the DS200 demonstrated what was described as intermittent screen freezes, system lockups and shutdowns. These issues were conveyed to the voting system manufacturer, Election Systems and Software, or ES&S, and ES&S provided the county with initial information on what they believe had occurred during L&A testing and then later on during the subsequent election.

I should say that Cuyahoga County enhanced and expanded the logic and accuracy tests that were initially provided by ES&S for the DS200 optical scanner. Cuyahoga County has approximately 1,068 precincts with about 1,200 machines to fulfill training and election needs in the county. During the course of the L&A testing, a "power down" and "freeze" anomaly occurred on some of the DS200 machines. This anomaly appeared a total of 89 times

during L&A testing without a distinguishable pattern in the timing or the actions taken that would cause the freeze/shutdown issue. During the May 4<sup>th</sup> election, poll workers reported four DS200 shutdowns to the county. Although the machine failures were encountered less frequently on Election Day than during L&A testing, the anomaly still presented itself in a number of machines.

The EAC was notified of the anomaly before the Primary Election and contacted Cuyahoga County, and then other jurisdictions that use the same system, as well as ES&S, to gather information. After determining that the information related to the freeze/shutdown issue was valid, I did open an informal inquiry into this issue.

Since the initiation of the informal inquiry, EAC staff has had numerous discussions with Cuyahoga County, ES&S, iBeta Quality Assurance, the voting system test lab for the Unity 3.2.0.0 system. In addition, in order to determine the potential extent of the problem, the EAC staff has also contacted other election jurisdictions using the DS200, including Orange, Miami-Dade, Escambia, Clay, Collier, and Pasco Counties in Florida, the Wisconsin Government Accountability Board, because a number of the local jurisdictions in the State of Wisconsin use the EAC certified system that Cuyahoga uses, and we also contacted the New York State Board of Elections. ES&S, to their credit, has submitted all relevant information in a timely manner. ES&S has also conducted an internal investigation into the root cause of the DS200 freeze or shutdown anomaly. EAC staff is currently reviewing the root cause analysis done by ES&S in order to close

the informal inquiry and to make a determination on whether the root cause analysis is valid and whether the matter should be closed, or perhaps whether questions exist sufficient to recommend to the Executive Director that we open a formal investigation.

In conclusion, I must say what a pleasure it's been to work with all of the jurisdictions during this inquiry process, particularly with Ms. Platten and her staff in Cuyahoga County. They've been very welcoming, open and cooperative with us during the entire process. And our hope is that the working relationship we are building with Cuyahoga, and with other DS200 jurisdictions, will set an example for future cooperation between the EAC and State and local election jurisdictions. In my opinion, such cooperation is the key element in quickly and satisfactorily resolving problems with fielded voting systems and to improve both the EAC testing process and the quality of manufactured voting systems for all election jurisdictions in the United States.

Madam Chair, that concludes my formal testimony. I would be happy to answer questions after Ms. Platten presents her testimony.

CHAIR DAVIDSON:

All right thank you. Ms. Platten we look forward to your testimony.

MS. PLATTEN:

Commissioners, Mr. Wilkey, thank you for the opportunity to testify today. My name is Jane Platten. I'm the Director of the Board of Elections in Cuyahoga County Cleveland, Ohio. Cuyahoga County has 975,000 voters. We have 1,068 precincts, approximately 450

voting locations on Election Day and a budget of \$20 million. We use the ES&S DS200 Unity 3.2.0.0 version voting system.

I'm here today to discuss our experience with the EAC's Quality Monitoring process and voting system anomaly reporting. Permit me to begin with a bit of recent history. In April 2010, while conducting our logic and accuracy testing process, which is quite extensive, on our 1,200 DS200 scanners, we experienced approximately a 10 percent failure rate due to the DS200 scanners shutting down or freezing. These were problems that we had not seen before in our testing process. This was the second countywide election that we were using these devices for.

When the scanner -- during the testing, essentially, what happens is, when you're scanning the ballots, all of a sudden the machine will literally shut down, such as your desktop or your laptop computer would shut down for no apparent reason. Or the second symptom was that the machine would literally just freeze. The screen would freeze, the ballot would be stuck and you'd have to turn the machine off and then reboot it in order for it to continue operation.

Immediately, when this began happening I turned to our vendor project manager onsite and questioned the shutdowns. The vendor representative gave an alarmed look but had no explanation. At that point we took action and had my staff calling all other jurisdictions that use the DS200 around the country searching for any that had experienced the system shutdown. At the same time, we spent three days proving to the vendor that their theory that our testing facility did not have adequate electrical

power was wrong. That was their initial reason for the shutdowns and the freezes. We were able to bring in our -- obviously, our electricians and such, and prove through testing that there was definitely adequate electrical power within our facility.

During our research with other jurisdictions, we found instances in Florida counties where upon receipt of the DS200 system they had experienced a shutdown and freeze problem as well, but although the symptoms were the same, the vendor stated the illness was different. And, in fact, the counties attested that the ES&S had fixed the problem that they experienced, initially, and it hadn't happened again. So, we did -- we did at least know that it has happened somewhere else, but we also felt comfortable moving forward trying to find other theories for the problem, knowing that Florida had a cured problem.

As a result of our publicity on the system shutdowns, we received a call from Mr. Matt Masterson. This was a most welcome contact and it is the first step in what I think has turned into an invaluable relationship with the EAC and a much needed exchange of information. I admit that, at the moment we began experiencing the shutdowns, my initial questions were not only, what is causing the newly purchased voting system to randomly shutdown during use, but also, why was this not discovered during the EAC certification testing process.

Since our initial discussions, we've openly and eagerly shared information with Mr. Hancock and Mr. Masterson, and with the EAC testing team. We hosted two of your EAC testers during our logic and accuracy testing for our August election, and have

invited them back in October for testing/observation again. And, we have sent audit logs from the DS200 scanners from two elections, now, to the EAC, so that we can help establish data on operational patterns to further identify moments of system vulnerabilities. And Mr. Hancock and Masterson have conducted critical conference calls between the EAC, Cuyahoga County, and ES&S. The phone calls truly brought together three worlds that, in my opinion, until then, functioned as the EAC and the vendor, or the vendor and the county. The three-pronged discussions were key, I believe, in keeping us straight, if you will, on details of the problems and strategy on how to proceed.

The EAC has made significant strides in bridging communication amongst not only our county, but has also hosted a user's conference with users in Florida, Wisconsin, New York and also Cuyahoga. I believe the dialogues -- I hope the dialogues continue and encourage the EAC to continue to lead that initiative.

I respectfully offer a few suggestions. Please continue to infuse practical election experience into your learning process when dealing with new systems or, in our case, an already certified system that experiences problems. Continue to invite election officials into the resolution process. Continue to visit onsite testing and Election Day operations. I believe it can only enhance the laboratory testing process. Please consider revising the vendor reporting requirements when systems certified by the EAC experience operational problems. Requiring notice 60 days after an election where problems occur is too long. In our case, we saw the shutdowns at least 30 days before Election Day. The vendor

should be required to give notice to the EAC within days. Please consider to send communication to counties, of EAC certified equipment, when there are problems. We assisted in the development of a written communication from the EAC to ES&S system users about the shutdown problems and steps to mitigate through it. This was very helpful communication to other users, I'm sure. And although the vendor may send product notifications to users, the EAC influence, I assure you, was significant. Please consider implementing a user's database, which is easily accessible, and links election officials, voting machine vendors, and the EAC to one another, creating accountability and transparency.

I encourage you to please read the Brennan Center's report by Mr. Larry Nordin entitled "Voting System Failures: A Database Solution" where he -- where he proposes the above mentioned concept.

An accessible clearinghouse database of information would certainly have been helpful when we were calling all over the country desperately searching for information on common problems for our DS200 issue. Anything that helps promote a healthy exchange of information in a transparent manner is a welcome change and this tool can further that exchange.

I believe that out of the unfortunate situation of the ES&S DS200 Unity 3.2.0.0 version system issues, we have developed a positive, inclusive and lasting relationship with the EAC, as well as more positive dialogue with our vendor, who we have a good relationship with. But this has enhanced our communication to a different level. I also believe that we, together, have taken the

responsible steps in communicating with the vendor and other users. I know the EAC cannot act as the referee, if you will, on all counts between vendors and users, but what has occurred is that the EAC has begun to build a much needed bridge between the parties.

Thank you Commissioners, Mr. Wilkey, Mr. Hancock, and Mr. Masterson. I commit to you that Cuyahoga County will continue to assist the EAC, in whatever ways possible, to continue to foster these relationships, as well as work toward improved system testing and operations. I very much appreciate your efforts.

CHAIR DAVIDSON:

Thank you, thank you very much. I'll start with Commissioner Hillman for some questions. I'm sure we have several for you.

COMMISSIONER HILLMAN:

Thank you, thank you very much, Ms. Platten, for joining us this morning.

My first question to Mr. Hancock, when you made your presentation this morning you sort of qualified, when EAC does a review of fielded voting systems, "Upon invitation or with the permission of a State or local, EAC at its discretion." If we know there's a problem and a State or local hasn't granted permission or invited us, what does EAC do then? Or what would it do?

MR. HANCOCK:

I think at that point probably the most we could do is make known that we are aware of an issue, you know, wherever the case might be, you know. The language in our Program Manual was qualified, as you state, because our voting -- our testing program and

certification program is voluntary, as you know. A lot of States participate, some, of course, do not. And it's those States that do not participate that, you know, may, at some point, have an issue with the EAC stepping in. I don't know that but, just to be safe, I think that qualification language -- or qualified language was put in the Manual.

COMMISSIONER HILLMAN:

I appreciate the qualification. And, I guess, my comment to both Mr. Hancock -- to Mr. Wilkey is, I wouldn't want EAC to be subjected to the same criticism that auto manufacturers and others are subjected to when they say, "You knew there was a problem and you didn't do much about it." So hopefully, as EAC certified systems are in the market, EAC can be a bit more aggressive than just saying, "Well Cuyahoga County, we know you're having massive problems. You haven't invited us and you don't want us in there, so enjoy your problems, and we'll just make note that we know they're there."

MR. HANCOCK:

Yeah.

MR. WILKEY:

Thank you...

COMMISSIONER HILLMAN:

All right?

MR. WILKEY:

...because that's the kicker. Once they get certified by us, then we have that kind of authority to be able to do that. And that's -- as we get more systems certified, certainly, I think we're going to start

seeing -- and I congratulate you for being here -- because that's the kicker, getting them certified. Then, we hold that key that we're able to do something about it.

COMMISSIONER HILLMAN:

Well, yes, but I thought I heard Mr. Hancock say, if the State or local doesn't want us there, whether it's our certified machine or not, we don't go. Well, I feel like that's between a rock and a hard place.

MR. HANCOCK:

It is, you know. And I think one of the things that will help this is the relationship that we're developing with Cuyahoga and with other jurisdictions. I was talking to Ms. Platten before the meeting started this morning and, you know, certainly the Federal Government and the EAC, even though we're a very small agency, is viewed by some out there as, you know, the Federal Government. And we don't want to make it look like we're coming in there with our black helicopters and rappelling down and sort of just taking over, right? We're happy to work with the jurisdictions, but we want it to be a cooperative relationship because that's certainly, we found, the way things work best.

But, I agree with you that, you know, any time there's an anomaly, or an issue with an EAC certified system, whether the State requires our certification or not, we have mechanisms to make that information available. Certainly our clearinghouse is one way to make it available. And as we have better relationships with counties, I think most of them will see the value of it and welcome us in there.

COMMISSIONER HILLMAN:

Well, I'm going to push this around a little bit more because I'm still very bothered by something. For me, it's not either/or. It's not either a cooperative relationship or EAC is coming down heavy handed. EAC has a responsibility. And so, our responsibility, if nothing else to ourselves and the vendors and our testing and certification process, means we have to know if there is a problem, what the problem is. And that is not monitoring the jurisdiction, it is monitoring the quality and functionality of the systems that we certify, whether the State is participating in our certification program or not. So, I hope that it won't be viewed as it's either/or, nor that EAC's need to be responsible for the complete process we engage is viewed as heavy handed or coming down in black helicopters. I mean. I just -- so...

MR. HANCOCK:

Right. and I certainly didn't -- you know. the only consideration is going in and working with the States. If it's an EAC certified system, we can do our own work you know. We don't. necessarily. have to go into the State. We can talk to the test labs, we can talk to the manufacturers and we can, you know, review whatever information might be out there from the press or the public or however we get the information. And certainly. if it's an EAC certified system, we would look into it and try to find the root cause of the problem. The only qualification I was talking about was, you know, whether or not we go into the State to actually, you know, do work onsite.

CHAIR DAVIDSON:

Isn't it true -- I would like to add, isn't it true though, in our Manual that -- and I feel that this is one of the things that didn't happen in this case, if I'm correct -- is, the manufacturers are supposed to report anomalies that take place. And this happened in Florida and was even corrected. They should have been reporting this so we could have let other people know that. Isn't that part of our process?

MR. HANCOCK:

That is absolutely part of our process, Madam Chair. And there was a slight, I guess, loophole in our Manual. The requirement is for manufacturers to report to us anomalies when they occur, I think, the current language is, in a Federal election. Initially, in Cuyahoga, anyway, this problem occurred during L&A testing prior to a Federal election. We are now in the process of revising our Testing and Certification Manual, because it's -- it's actually time to do that. But one of the things we will do is expand our definition of Federal election to include pre-election logic and accuracy testing, as well as post-election auditing, to try to cover the gamut of potential areas where we might find problems.

COMMISSIONER HILLMAN:

My next question is what, if anything, is the relationship between manufacturing site reviews and fielded system reviews? Does one or the other kick off the other review?

MR. HANCOCK:

Potentially, but not necessarily, for example, if a field anomaly such as we've seen in Cuyahoga. If we could, at some point, trace it back to a manufacturing quality issue or something like that, then,

you know, it may trigger us going in and reviewing the manufacturer facility itself to look at their production processes. So, it certainly might. And they're all sort of interrelated, as I've talked about in my testimony, for improving our program, improving the quality of voting systems in assisting jurisdictions.

COMMISSIONER HILLMAN:

Thank you. Ms. Platten, well, all I can say is thank you very much for inviting EAC in to work with you to help identify and resolve the problem. It certainly did give us a good opportunity to test the words in our Manual with the reality of what you were going through.

A couple of questions for you. How were you able to identify other jurisdictions that use the same system?

MS. PLATTEN:

I believe, actually, it may -- it's Verified Voting Web site, the organization is Verified Voting, has a list of other jurisdictions in the country and the voting systems that those jurisdictions use. It's not entirely up-to-date, but that's where we started. We also spoke with the vendor and said, "Who else uses DS200s, right now?" The system that we use is, although there's DS200 use, the versions are so different. And actually one of the things that we talked about with the vendor is, "Oh, well, Florida uses a totally different version." "Well we know that, but I want to talk to everyone who has a DS200 system." So, we didn't just stop at those that used our version. But it was mostly through research on our own to identify those communities that use the DS200, as well as, we had some common knowledge based on our discussions with the

vendor during the purchase of, as well as during the problem experience, in terms of who else used the system.

COMMISSIONER HILLMAN:

I have a couple of other questions for you. But before I do that, Mr. Hancock, is EAC eventually going to be able to be a resource where States and locals can go to see who else is using their system?

MR. HANCOCK:

Absolutely, Commissioner, thank you for asking that question. Currently, our Communications Department is working on an interactive map that will be posted on the Web site, and that map will contain jurisdictions using all the EAC certified voting systems anywhere throughout the country. So, a jurisdiction, like Cuyahoga, could go click on it and find out where jurisdictions are using the DS200. It will also have State requirements for certifications and things like that. So eventually, that will be populated and up on the Web site as a resource tool.

COMMISSIONER HILLMAN:

Do we know what “eventually” means?

MR. HANCOCK:

I do not know exactly. I know they’re working on it, currently, and they actually hope to have it up this week, but it is not yet. So...

COMMISSIONER HILLMAN:

Before 2012?

MR. HANCOCK:

I absolutely hope so, yes.

COMMISSIONER HILLMAN:

All right.

MR. HANCOCK:

I will check with our communications director on that.

COMMISSIONER HILLMAN:

If it's going to be a resource, I would think the upcoming 2012 Presidential would be the -- an appropriate goal to work toward.

MR. HANCOCK:

I think well before that, yes.

CHAIR DAVIDSON:

Is -- can I ask is that all States or is it just the ones that fall underneath our program?

MR. HANCOCK:

I think, initially we're going to populate it with States that use our certified systems. But, again, the communications director will have to speak directly to this, but I believe we're going to try to get information for all States as we can.

CHAIR DAVIDSON:

Thank you. Sorry to interrupt.

COMMISSIONER HILLMAN:

No problem. Ms. Platten, when you do your logic and accuracy, do you test every system you have?

MS. PLATTEN:

Yes, we do. We test the DS200 system, we test the M650, which is the high speed scanner, as well as, we test the Unity software. We, literally, run an election during our L&A test. We go through everything on the DS200, from checking the time and date from the moment that the machine is turned on. We go -- we have

sampling, per precinct by polling location, of ballots, for each of those polling locations. We use approximately 500 DS200s for the test. It's very extensive. And then, we actually take the sticks out of the scanners, we take the discs from the high speed scanners, we upload them into the Unity system, as any other election, and we tabulate all the election results with an expected election results report, to ensure that the ballots are reading accurately, but also that the Unity system is tabulating correctly, prior to any election, regardless of size.

COMMISSIONER HILLMAN:

Do you test every machine? I don't mean in addition to each system. Do you test every single piece of equipment?

MS. PLATTEN:

We use approximately 500, I believe, out of the 1,200 DS200 scanners. So, we don't use every DS200 scanner.

COMMISSIONER HILLMAN:

For the testing or for your elections?

MS. PLATTEN:

For the testing. We do use -- we use 1,068 scanners, and the balance of the scanners are used as back-ups in case we needed to replace any scanner on Election Day.

COMMISSIONER HILLMAN:

Okay. So, when you identified the problem during the testing, your L&A testing, logic and accuracy testing, what -- how did you know if that problem existed in the untested system -- machines?

MS. PLATTEN:

You know, I'm sorry, we do -- I'm sorry, we test every single DS200. All 1,200 DS200s are tested during our logic and accuracy test.

COMMISSIONER HILLMAN:

Okay.

MS. PLATTEN:

We -- I mixed up another test that we do, because we do a lot of testing in Cuyahoga County, I apologize. We do, actually, simulate an election, like I described, but the logic and accuracy test is, literally, another election simulation, and we do use every DS200. Every scanner is tested prior to executing the election on Election Day.

COMMISSIONER HILLMAN:

When you had to do the rebooting, is prior information saved?

MS. PLATTEN:

Yes, we were able to identify that no votes had been lost. No data that had already been input in the scanner had been lost. And when we had the experience with the 89 scanners that failed during logic and accuracy testing, we segregated those 89 scanners. And then, we took the sticks out of those scanners and uploaded them into a separate database, just to contain the testing, to ensure that no votes had been lost as a result of the shutdown. And we did that, so that we knew how to mitigate through the problem on Election Day, whether or not we had to replace the scanner, or that we could continue the election. And we determined through extensive testing that nothing had been lost.

We also implemented a policy that, if a scanner in the field on Election Day experienced two shutdowns or freezes, we would immediately remove that scanner regardless of our confidence that votes hadn't been lost, and we would replace it for the rest of the -- remainder of that day, and that scanner would be taken out of commission.

COMMISSIONER HILLMAN:

I have one other question. But Madam Chair, the issue of the Brennan Center Report and the recommended database is too big an issue for me to think it's not going to get raised, so I'll leave that for either you or Commissioner Bresso. I'm sure one of us wants to raise it.

Did you get any feedback, Ms. Platten, from the voters about any concerns or confidence they may have had with the news reports and information about how you and your team responded to the issues, in terms of whether or not their votes were going to be accurately captured and recorded?

MS. PLATTEN:

Cuyahoga County has, over the last years, had a significant number of hurdles that we've overcome, let's put it that way, and so, additional news stories about further voting system complications is never a positive or welcome concept within the community. It's -- I think that -- I think that we have come a long way, but when something like this happens, the community in general will again scratch their head and say, "What's going on? Why can they not get the voting system right?"

I think that at the end of the day, despite the fact that there were obviously going to be public fallout, in terms of confidence, to some degree, we were able to proceed with an accurate and efficient and transparent election. And I think that the confidence level did not suffer a great degree, as it has in the past, when we were not able to, as effectively, recover from voting system problems. And I would say that that would be prior to us using the ES&S system, in all fairness to the vendors.

I think that -- I think that Cuyahoga County -- I loathe the day that we have a system problem that is so significant that it has to be raised to the level beyond being able to understand a minor issue and proceed forward with a resolution. But we invited the community in, we invited the media, and we discussed it at a public meeting immediately upon this happening. And I think that that, to some degree, had some effect on the fact that, yes, was there some head scratching? Absolutely. Was there a downturn in the confidence level in the voting board and the voting system? Not so much, because, basically, from whence we've come, if that makes sense.

COMMISSIONER HILLMAN:

Sure, sure. So is the problem fixed?

MS. PLATTEN:

The problem is not fixed completely. The vendor is working, again, still with the EAC, and testing the new version, the firmware upgrade that will fix, I hope, for good, this problem. We do -- we only experienced it twice on Election Day, in September. We just had a countywide primary election. Two times, during the day, we

had shutdowns, which is a significantly lower number than we had in May. And it's very random. But the problem is not fixed, and I hope for all of our sake in Cuyahoga County, so we can move on, it will be fixed soon.

COMMISSIONER HILLMAN:

Thank you.

CHAIR DAVIDSON:

Yes, Commissioner Bresso?

COMMISSIONER BRESSO:

Yep. Mr. Hancock, how many reviews has your division done for fielded systems that we have certified? Or is this the first one?

MR. HANCOCK:

This is, in fact, the first, Commissioner.

COMMISSIONER BRESSO:

Okay. And this system was certified to the 2002 VSS?

MR. HANCOCK:

Correct, yes.

COMMISSIONER BRESSO:

Okay. And this may be difficult to answer, but I'm going to ask it anyway. Is there anything in the 2005 VVSG, under the testing requirements, that would have captured this type of issue they've had with the DS system that's used in Cuyahoga, or hard to tell?

MR. HANCOCK:

It's very hard to tell since, as Ms. Platten said, we're not a hundred percent certain that the issue has been entirely resolved, yet. So, once it is resolved, we'll kind of take a look at it and determine whether something in testing, perhaps, could have caught that. But

the one thing that, you know, we have to realize is that, you know, testing, no matter how careful, is never going to be able to truly duplicate what happens out in an election jurisdiction, you know. Our test labs might have, you know, five or eight or ten machines that they put through tests, you know. The jurisdiction is a big jurisdiction. Again, as Ms. Platten says, it has thousands that they're going to exercise, you know, during every election. So, they're bound to catch some things, especially random anomalies such as we're finding occurring here, you know, that may not be able to be caught in testing. But it's certainly something we'll look at.

COMMISSIONER BRESSO:

Okay. On page -- Mr. Hancock, on page two of your testimony, on the bottom, you stated that, "The Program Director," which is you, "may notify a manufacturer that an informal inquiry has been initiated, but such notification is not required." Can you describe for me a scenario where you wouldn't notify the manufacturer of something like this?

MR. HANCOCK:

We certainly did, in this instance. I just think it's prudent in all cases to do so. I suppose in an instance where it is something that we can see is very easily fixable, or perhaps something that we could deal with sort of ourselves, or through our testing process, without notifying the manufacturer. But just I think it's prudent, in almost all cases, to do so.

COMMISSIONER BRESSO:

That's what I would think, as well. Also, can you elaborate, a little bit, on the informal inquiry process that you described and what process may -- what it may entail, including a generalized timeline, so the public can get an idea of the rigorousness of the process and how long it may take? Because right now, we're on, what, about four months, five months for this process?

MR. HANCOCK:

Right, right, again, generally speaking, it would take the process that we've taken with Cuyahoga, you know. We'll talk to the jurisdiction first to find out, you know, if perhaps, an issue that has been reported to us is actually what the jurisdiction's experiencing. I think that's the most important thing because, you know, an informal inquiry can come from any source. It could come from a newspaper article. It could come from a phone call from a voter or any other member of the public. So, we need to talk with the jurisdiction to make sure that the report is credible and is, in fact, what the election jurisdiction is experiencing. Of course, then we'll talk to the manufacturer and see what they're finding out, what steps they are taking to mitigate the problem or fix the system, as the case might be. And then, I think from what we've learned in this instance, in a lot of cases, it is going to be prudent to speak with other election jurisdictions that use the voting system to see if, even though they might have different versions of the software, perhaps, with the system, that whether they're experiencing similar issues that might suggest some more systemic problem, or perhaps a bigger problem that's related to a manufacturing process, you

know, that might be, sort of, go across versions of the system. So, generally, that's the way it would go.

I think we've tried to be very careful, in this process, since it has been the first time that we've done one of these informal inquiries. And also, I think the random nature of the anomaly that they're experiencing has kind of dragged it out a little bit because, you know, we're really trying to get a handle on what the real problem is.

COMMISSIONER BRESSO:

All right, and this was nothing that the test lab experienced when they were conducting the test?

MR. HANCOCK:

Correct, they did not, no.

COMMISSIONER BRESSO:

Okay, thank you. Ms. Platten, thank you for joining us today. Can you describe for me, how long had Cuyahoga County been using this voting equipment, and how did the county go about purchasing it? Is it -- was it under a statewide law that required you to get this type of equipment? Or was it the decision of the county?

MS. PLATTEN:

We have been using the ES&S DS200 system since September of 2009. To give you a bit of history, in 2006, Cuyahoga County implemented what was Diebold, at the time the TSX touch screen voting system. Cuyahoga County went through significant difficulties with that electronic voting system implementation. In 2007, Secretary of State Brunner conducted a study of the voting systems in the State of Ohio that were being used at the time.

Although she did not decertify the Diebold touch screen electronic voting system across the State, she did make a recommendation that Cuyahoga County move toward an optical scan ballot system. And that was in December of 2007. On December 21<sup>st</sup> 2007, she cast a tie -- she cast the vote that broke a tie amongst our four board members, which, essentially moved us into the ES&S optical scan voting system. At the time it was an M100 voting system, the predecessor to the DS200 scanners.

We had approximately 70 days to make the turnaround in the voting systems, between the Diebold system to the ES&S system, prior to the March 2008 primary Presidential election. We used a central count operation that night, so we didn't have the M100s in the precincts, because we just didn't have enough time to implement that, and the vendor did not have devices, basically, to deploy to us in such a short period of time. So, we did go from the concept of a precinct scanner to a central count scanning system. In April of 2008, April/May, somewhere in there, the Ohio legislature, basically, outlawed central count, which, then, immediately moved us into acquiring, on a rental basis, M100 precinct based scanners. In the meantime, we had a -- Congresswoman Stephanie Tubbs Jones passed away, and so, we had an immediate special election where we were able to test and implement the M100s in a significant portion of the county, in practice, if you will, for the November 2008 Presidential election, where we did a full implementation of the M100s.

We, at the same time, conducted a bid process. We put out proposals to the vending manufacturers, including, Diebold, Hart,

InterCivic, ES&S. Those are the systems that are certified to operate in the State of Ohio. And after an extensive proposal and review process, we chose the DS200 system. Although it had not yet been certified by the EAC, it was in the process of being certified. And until it was certified, we were using the M100 system. Finally, in August of 2009, we received the DS200 scanners and implemented, in about two-thirds of the county, a small municipal election, and then, went full-scale, countywide, in November 2009. And, in November of 2009, we did not see the problem that we're talking about today. We had another issue with that system, which the EAC has since approved the fix for what we had experienced then. I know it's a long answer to a short question, but that's history, in terms of how we became ES&S users.

COMMISSIONER BRESSO:

Okay thank you, I appreciate you providing us with a history.

Now that you've gone through the process, I know you talked a lot about the relationship and communication you've had with the EAC, can you describe a little bit the role that the manufacturers played, and if you believe it should be expanded, or should be different or anything, that we should know, with the EAC, in working with the manufacturers in the future, when we have a situation like this occur?

MS. PLATTEN:

We -- again, we have a positive relationship with the vendor, with the manufacturer, ES&S. But the one thing that really has come to light in this process is that the communication between the vendor and the user, the county or the State, is not enough when

something happens to this degree. It's not enough, even when we're waiting for certification. I've had two experiences, now. One, when we were waiting for the DS200 system to be certified; and, two, when we experienced two anomalies within the system, first in November '09, and now, in May 2010. And again, communicating with merely the vendor and depending on the vendor for information as to what's going on at the EAC level is not enough. And there has to be that three-pronged communication level of discussion, because we want to know what's going on in actuality. and I think the EAC needs to know what's going in actuality at the county level, and get the -- get the practical experience perspective, in terms of what's happening in the testing environment in the county, which is much, much different than a laboratory testing facility, and the environment of an Election Day, as well as keep the manufacturer, you know, keep the manufacturer engaged amongst all three of us.

COMMISSIONER BRESSO:

Okay, thank you. And lastly, I know Commissioner Hillman mentioned this, and you also mentioned it in the -- your testimony that you provided to us, the Brennan Center Report. Can you highlight exactly what you believe, or anything in particular about that report that the EAC should be aware of?

MS. PLATTEN:

The report, actually, I think there's three, or slightly maybe more, just a few more major recommendations. The report talks, in my opinion, most importantly, about a communication mechanism whereby the vendors, the users and the EAC can exchange --

freely exchange information on issues, such as what we have experienced in Cuyahoga County. That would be a clearinghouse database where we would be able to access and input and share details of issues that we experience, not every day, I don't believe the intent is every day election system issues, but serious problems, anomalies that we encounter. He goes so far, in the report, to suggest that it should be publicly accessible, as well, which I'm not opposed to. But, it's, in my opinion, if I can't have -- if we can't have it at all, let's at least have to begin with a discussion amongst the three entities, so that if Wisconsin encounters anything going on in their election, in their initial usage of the system, I can go into that database and, as an election official, see what's going on, and either, "Hey I can help you with that problem, we had that problem here," or "Hey you know what," to my staff, "we need to watch out, make sure that this doesn't happen here. And if you see any hint of this problem, you know, let's pay attention to that." That, I think, is the most important recommendation in that report, not diminishing any of the others that are in there.

COMMISSIONER BRESSO:

Sure. And along with that, in the report, there's a recommendation that it would be only the election officials that would be able to have the ability to provide -- to put information in. The public would be able to view it, but then, not provide comment or provide any other additional information. Is that correct?

MS. PLATTEN:

I don't recall, specifically, what his -- the structure specifically is. From my own perspective, I think the elections officials, the

manufacturer and the EAC need a tool by which we can communicate. And if it's publicly viewed, absolutely I'm not opposed to that whatsoever. But we need to be able to communicate, and then, there could be an additional piece to this puzzle somewhere down along the line, maybe, with public interaction.

COMMISSIONER BRESSO:

Right.

MS. PLATTEN:

But, at least to begin with, we need to start talking to each other.

COMMISSIONER BRESSO:

Okay, thank you.

MS. PLATTEN:

Thanks.

CHAIR DAVIDSON:

Okay, let's see if I can ask questions that haven't been asked before. Obviously, you talked about what you do and how detailed that you make your logic and accuracy testing, and then the testing before the election. And I do so applaud you for that because the mistakes that are found before an election, it certainly takes away a lot of those mistakes that some find Election Day, that they're trying to answer to the press or to whomever.

In that regard, I think it's so valuable that it's done. Is there -  
- one thing that I would like to bring up is, if you would have only done the testing, the accuracy and logic testing that was provided to you by your manufacturer ES&S, would you have found this problem?

MS. PLATTEN:

I don't believe that we would have found the problem. One of the explanations that ES&S gave us, relative to why this was happening, is because our logic and accuracy test was significantly more extensive than what they originally recommended to us when we first got the system. And the interaction, the touch screen interaction is one of the elements of the problem that caused the shutdown. So, the more -- so the -- and they said to us, "You won't see this happen as much on Election Day as you do during your logic and accuracy testing, because the poll workers don't interact on that touch screen as much as you do during your testing." So, I really don't -- I don't know if we would have found it. Perhaps, potentially, yes, eventually. But again, we went through a countywide election where we didn't see it. So, I can't explain the randomness, but I do think that the furtherance of the testing that we do is why we found it.

CHAIR DAVIDSON:

I think that's very important for us to know, because in our publications that we do, the Quick Starts and everything like that, the information we've always tried to provide to our election officials is do your own, besides what is provided to you by your manufacturer. And I think it's important that we do emphasize that. So, that helps us even further the need, so thank you.

I think you've pretty much answered this, but Brian, what additional steps do you think the EAC can take to demonstrate the value of the corroboration that we've had with Jane, in doing this testing? What can we do more than we've done in the past?

MR. HANCOCK:

Well, I think publicizing the work that we've done and the cooperation that we've found in our experience is great, you know. Putting it in the newsletter, you know, in our certification division's newsletter that goes out. Perhaps talking, you know, when the Commissioners, or any member of the EAC staff attends an election officials' meeting, you know. I think all of those things would help. Allow election jurisdictions to feel more comfortable contacting us whenever they experience a problem.

CHAIR DAVIDSON:

Have you seen election officials come forward, now, to you and say, "We've had this same problem and here's -- we want to be kept in the loop of all the information"?

MR. HANCOCK:

Absolutely, we experienced that quite a bit in Florida, when we went down to Orange County last month. We talked to them. They're DS200 users. They talked to us about other counties in the State of Florida that had experienced problems. And those counties, you know, were also very happy, including Miami-Dade, which is their biggest jurisdiction, to come forward and explain to us exactly what they were encountering.

CHAIR DAVIDSON:

Do you have suggestions on how we could get more election officials to take part in our program, Ms. Platten?

MS. PLATTEN:

You know, even as simple as a letter to the election officials that use your certified equipment. Start off introducing the fact that you

welcome a communication with us and that we are welcome in the process when dealing with certifying or correcting problems in certified systems.

I can tell you that it didn't -- and I'm -- I regret this now, but it didn't occur to me to pick up the phone and call the EAC when I had the problem, perhaps because it was so stinging at the moment, just prior to a countywide Federal election, that I had to deal with this issue. But I was -- am very grateful to have gotten the call from Matt Masterson as a result of this. And now, I realize that I can call the EAC, and I'm not sure that all the election officials have that comfort level. I didn't. And I talk -- now, when I talk to the activist community, and I'm involved in some other communications with other election jurisdictions, and I've said to them that it's a different world than we ever imagined as election officials, at the EAC level, and that there's a welcoming atmosphere to get additional information just beyond the vendor communication. So, I think even as simple as starting with a letter to those counties that use your certified equipment, and then go from there.

CHAIR DAVIDSON:

Well, definitely, your experience in Cuyahoga County has, I think, taken us leaps and bounds into the future as we move forward. We've spoke about your, you know, experiences at conferences even, so that helps in notifying people. And as the word spreads, hopefully, they will feel more at ease about reporting these, that it can be a plus.

Do you see that you have a stronger relationship with your manufacturer because of bringing EAC involvement into it?

MS. PLATTEN:

We have a very strong relationship with our vendor. They are and have been with us almost on a daily basis since we got the system. I think that they have a different understanding of my approach, now, to the issue, as a result of the EAC being involved, and as a result of the vendor's knowledge that I'm in direct and close communication with your staff. And I think that there is a greater appreciation, now, for how I'm handling this.

CHAIR DAVIDSON:

Okay, very good. Well, we certainly appreciate your time...

MS. PLATTEN:

Thank you.

CHAIR DAVIDSON:

...and coming and testifying today.

Is there any additional questions that the Commissioners have? And then, I'm going to turn to Mr. Wilkey to see if he has any.

COMMISSIONER HILLMAN:

Just a reflection. I'm very sobered and humbled by Ms. Platten's observation that, perhaps, EAC is still not seen as the go-to place when you've got a problem, by the majority of election officials. And though we've heard that over the years, apparently, there is some vestige of that, that we need to grapple with. I have not memorized all the components of our Strategic Plan, but I know customer service is in there somewhere. And I don't remember the exact language, but I think that it goes beyond just posting fabulous information on our Web site. And we cannot be hamstrung by the

Paperwork Reduction Act, which, I think intimidates and prohibits staff from thinking creatively in certain areas of outreach. So, I think it's something we need to think about and work on.

CHAIR DAVIDSON:

Commissioner Bresso?

COMMISSIONER BRESSO:

I'm fine, thank you.

CHAIR DAVIDSON:

Mr. Wilkey, got questions or...

MR. WILKEY:

Yes. First of all Commissioner Hillman, I totally agree with you. And I think as we see more presentations like this and we can continue to get that word out, we're going to see that feedback. I think we saw it when we arrived in Orlando for our meeting. We didn't have to reach out to them, they came to us. They said, you know, "We have this equipment. We would like you to come and see what's going on." I have a strong sense, that, following this election, in which a number of DS200s will be used around the country, as well as other systems that we may have certified, that we're going to begin to see this.

First of all, I want to say to you, Ms. Platten, that I am certainly aware of the issues, of the number of issues that Cuyahoga County has had over the years. You've certainly had your hands full. But, I can say publicly, that your Commission has certainly got to be very proud of the work that you're doing. And I appreciate you being here, because this is a big event for us, because your being here is going to send a signal, hopefully, to

your colleagues around the country that we're here to work hand-in-hand with you and the vendor, it's a three-way street, to get these systems -- to get these issues resolved.

Secondly, I commend you for something that I've been talking about for ages, and that is using a comprehensive L&A test on all of your equipment. It is an issue that is still a problem in many of our jurisdictions, probably because it is time consuming. I heard that when I was up in New York. They require a very comprehensive logic and accuracy test and, you know, not everybody is happy about it. But yet, it serves the purpose, in your perfect example of that, because you did do a comprehensive test, and the results of that test are why we're all here today. So, I'm hopeful that that message will get out, too. Yes, it takes time. Yes, if you do it the right way, it's going to use a large number of ballots. And for our medium and small-sized jurisdictions, it is an issue, but they need to understand that that's the only way that they're going to guarantee that these systems are accurately counting the votes. And so, I commend you for that, also.

And hopefully, your presence here today and the work that you have showcased here today will be heard loud and clear. And I think it's incumbent upon all of us, and we are with State and local election officials, to make sure that they you were here and they know what you said. Thank you very much.

Thank you, Madam Chair.

CHAIR DAVIDSON:

You know the one other thing that L&A does that we really didn't mention, today, is, it finds the human errors, even a misspelling or,

you know, the ballot that's lined up incorrectly. So, it finds lots of things prior to an election, so it is very important testing. I can't stress it enough.

And again, I want to thank you for being here and sharing your experience, and ongoing experience, because we're not finished yet. So obviously, we'll continue on with it. So thank you for your presence, today.

And we'll take maybe a ten-minute break to set up for our next presentation. Thank you.

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[The Commission recessed at 10:35 a.m. and reconvened at 10:50 a.m.]

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CHAIR DAVIDSON:

I'm going to call the meeting back to order and next we're going to be discussing several policy proposals through the VVSG 1.1, is what I'm calling it right now, because that's what we've been calling it, so we're going to be discussing that here in a little bit, our updates to the current 2005 Voluntary Voting System Guidelines. During the process of drafting the next iteration of the VVSG, while reviewing the public comments staff realized that we could make a few updates, now, that would immediately improve our process. Staff is recommending that the Commission consider revising the current 2005 VVSG making these changes.

Today, we will hear from Matt Masterson, Voting System Certification and Testing Deputy Director. Matt will describe each of the five policy considerations along with staff recommendations. And in this, Commissioners, maybe I need a little bit of feedback

from you how you would like Matt to do this, because as you saw, besides his opening, and talking about it, we have, each of the -- almost a white paper of each of the standards, the issues, the recommendations. Do you want Matt to read everything or maybe just the issue and the recommendation? Or how would you like -- do you want him to go through each -- really go through it totally or how would you like? Do you got some suggestions after reading it?

COMMISSIONER BRESSO:

I would say that if Mr. Masterson is going to go through each one, maybe after each decision point, if there are questions for each one we can ask at that point, because otherwise it may get too confusing for the public to be able to follow, since there are, I believe, five decision points.

CHAIR DAVIDSON:

And I agree with that. But do you want him to go through the standard, the comments that were issued and the issues that really are out there, whether it was a resolution or whatever, and then, also their recommendation? Do you want him to touch on each one of those things?

COMMISSIONER BRESSO:

I'm comfortable if he does. He doesn't have to read it word for word, but if he feels comfortable paraphrasing each one, I would be amenable to that.

CHAIR DAVIDSON:

Commissioner Hillman, are you okay?

COMMISSIONER HILLMAN:

Paraphrasing and I think to zero in, with more than paraphrasing on what the issue is...

COMMISSIONER BRESSO:

Right.

COMMISSIONER HILLMAN:

...from which there comes a recommendation.

CHAIR DAVIDSON:

That's great, that way Mr. Masterson, we'll let you begin. And we appreciate all the hard work. We know that anytime we are doing any type of the VVSG and making decisions it's a lot of work for the staff, and it's a considerable amount of discussion and issues for the Commissioners. So, I appreciate you bringing these five points to us today.

MR. MASTERSON:

Well, thank you, Chair Davidson, Commissioners Hillman and Bresso, and Executive Director Wilkey. Today, I'll testify regarding the pending policy decisions for the proposed revision to the 2005 Voluntary Voting System Guidelines. Before I discuss today's policy decisions, I think it's important to provide terminology and context for the discussion we're going to have today. There are four different sets of voting system standards, or guidelines, that may come up during today's discussion, and I want to define them each for the purposes of our conversation today.

There's the 2002 Voting System Standards, which was created by the Federal Election Commission, and used by the National Association of State Election Directors for their testing process.

There is the 2005 Voluntary Voting System Guidelines, which was adopted by the EAC in December of 2005, as required by the Help America Vote Act.

There's the revision to the 2005 Voluntary Voting System Guidelines, which is what we will discuss today, and which I'll expand upon later in my testimony.

And finally, there's what has come to be known as the next iteration of the Voluntary Voting System Guidelines. The next iteration of the VVSG is a draft created by the EAC's Technical Guidelines Development Committee and submitted to the Commission in August of 2007. So, that's the terminology I will try my best to use today, so as not to apply any labels -- other labels to it, and we can be clear about what we're discussing about.

As I mentioned, the 2005 VVSG was adopted by the EAC in December of 2005, within the nine-month timeframe prescribed by HAVA. After its adoption, the EAC's Voting System Testing and Certification Program began. In December of 2006, the 2005 VVSG became the required set of guidelines for all systems submitted for testing to the EAC. Since that time, EAC has certified two voting systems to the 2005 VVSG, and two modifications to voting systems were tested to the 2005 VVSG. In the course of testing these systems, EAC's program has learned a great deal regarding the testability and clarity of these guidelines. It is this practical experience that led to the EAC's decision to propose revising the 2005 VVSG. The purpose of the revision is threefold. One, to clarify the guidelines to make them more testable; two, to enable the National Institute of Standards and Technology to create

test suites for the proposed revisions; and, three, to update portions of the guidelines that could be easily updated without dramatically altering the nature of these guidelines. In essence, the EAC wanted to improve the consistency and efficiency of the testing process in a short period of time.

To accomplish these goals, EAC worked with its partners at NIST to take portions of the next iteration of the VVSG and incorporate them into the 2005 VVSG. This would allow EAC to take advantage of the precise, testable nature of some of the requirements in the next iteration, while maintaining the general structure and testing scheme of the 2005 VVSG. Those sections of the next iteration selected for use in the revision to the 2005 VVSG represent areas EAC staff has identified as being most in need of clarification and updating, as well as easily implementable into the 2005 VVSG.

The policy discussions discussed today present issues presented as a result of the 120-day public comment period EAC conducted for the revision to the 2005 VVSG. During the public comment period, EAC received 307 comments via its public comment tool. EAC's Standards Board and Board of Advisors also commented. In addition, as a result of the public comments, EAC held an accessibility roundtable on August 5<sup>th</sup>, 2010, to further inform EAC about accessible technology and how that technology might be leveraged to improve access for voters with disabilities. This roundtable proved to be very useful in understanding the implications of several of the policy decisions we will discuss here today.

So, with that information as background, I would like to start with the first policy decision. And as requested, I will attempt to summarize the issue, the nature of the standards that were commented on, the comment itself, and then the staff recommendation, if that's okay.

CHAIR DAVIDSON:

Matt, can I ask you to do one thing...

MR. MASTERSON:

Sure.

CHAIR DAVIDSON:

...before you do that? Would you explain, in really non-technical terms how these proposed revisions would improve our guidelines, to kind of help the audience...

MR. MASTERSON:

Sure.

CHAIR DAVIDSON:

...understand that?

MR. MASTERSON:

Absolutely. The proposed revisions -- as we've experienced in actually testing to the 2005 VVSG, and as we've worked with NIST on the test suites, what we've seen is that in some areas the 2005 VVSG lacks testability and consistency. And that lack of clarity, at times, has led to inconsistent testing both within the lab and outside the lab, which has also led to the EAC needing to issue what we call requests for interpretations of the standard. And each time we issue -- and we have about 19 of them right now -- each time we issue an interpretation, it causes consternation, I would say,

amongst the manufacturers, and even the labs because it, for some, changes the playing field, it changes -- it moves the map on them. So, what we'd like to do with these revisions is really bring clarity to certain sections of the VVSG that needed it, so that that change doesn't happen in the course of testing, you know. We issue these interpretations as we go along in testing. They present themselves, you know, in a very real fashion during a test campaign, and that's not good for the test campaign. That's one of the things we identified as causing time delays, because, then, the manufacturer may need to go back and adjust, just based on that interpretation that we issued. So, we'd like to have that playing field laid out before them and stabilize the standard itself, stabilize the 2005 VVSG and the testing to it, so that we can then move forward without having to issue 19, 20, 21 interpretations at a time.

So, that really was the goal is to add some precision to much of the language in the 2005 VVSG.

CHAIR DAVIDSON:

Thank you. Commissioner Hillman, I saw you lean forward. Did you have a question also?

COMMISSIONER HILLMAN:

I just wanted clarification. Are these the only policy decisions that the Commissioners have to consider for the revision to the 2005?

MR. MASTERSON:

Yes.

COMMISSIONER HILLMAN:

Okay, thank you.

CHAIR DAVIDSON:

Okay. We're ready to start, then, it looks like.

MR. MASTERSON:

Okay, thank you. So, the first policy decision that I'll present to you, today, deals with the synchronization of audio and visual displays. And the proposed requirement in the 2005 revision outlines a requirement that, basically, would require that for an accessible voting system you must present the audio and visual synchronized together, and it puts a very hard requirement on that. And that is a good thing. That's not a bad requirement, except it had an unintended consequence that the Standards Board threw to us, as a comment, and that was, it impacted vote by phone. Some jurisdictions choose to use vote by phone as their accessible device, and vote by phone does not have a "visual" display that audio could be synched with it. And so, the unintended consequence was we're impacting vote by phone because we were thinking of the "accessible voting system" as simply being a visual display in the polling place, and not this vote by phone.

And so, the Standards Board in their comment expressed concern that we are causing an unintended consequence. And so, the issue is that the proposed requirement could have an unintended impact on some already existing technologies used in the States, specifically vote by phone. And they recommended that we, basically, go back to the existing requirement that's in the 2005 VVSG, right now, which still requires when a visual display is used synchronizing audio and visual. So, it backs off this requirement to have this visual display and that they be synched, but instead the

2005, as written now, requires that if a visual display is used that the audio and visual be synchronized.

So, the staff recommendation is to continue use or to incorporate the already existing 2005 VVSG requirement, where, if you use a visual display the audio and visual must be synched.

Are there any questions about that?

COMMISSIONER HILLMAN:

I do have a question, because I'm not sure how this plays out. So, the recommendation is that the requirement for synchronized audio/video be removed. That's not what I hear you saying, and it's awfully confusing...

MR. MASTERSON:

Okay.

COMMISSIONER HILLMAN:

...because it does sound like that requirement is being removed.  
Removed from what?

MR. MASTERSON:

Okay. So, the proposed -- I hope this clarifies. The proposed requirement that is currently in the revision to the 2005 VVSG would be removed. And, in this staff recommendation, we say that we would change the language back to what the old -- the 2005 VVSG already had, where it says, "An accessible voting station using an electronic image display shall provide synchronized audio output to convey the same information as that which is displayed on the screen." So, we would remove what is already in the revision to the 2005, and instead, incorporate this requirement that's already in the 2005.

COMMISSIONER HILLMAN:

Okay. We haven't adopted those revisions.

MR. MASTERSON:

Correct.

COMMISSIONER HILLMAN:

So, we are being asked to change something we haven't adopted, I'm confused.

MR. MASTERSON:

Right. So, the policy decision, here -- in the process of creating the 2005 revision, there are policy decisions, which we're talking about today, that will shape what the revision to the 2005 VVSG looks like. So, I couldn't have you adopt the revision to the 2005, and then, ask you to go back and change it. What we're attempting to do, I think, today, is present these to you so that you can tell us, the staff, what you want in that revised 2005 VVSG. And this is our recommendation, is that, as proposed right now, in its draft form, the 2005 VVSG revision has this requirement that the Standards Board commented on, as having an unintended impact. And what we're proposing to you, as a staff, is saying, take this proposed, you know, draft, remove from that draft the requirement that's in there, and put in the previous VVSG requirement that would then be presented to you later to vote on, as a whole. So the whole -- you're not voting on the revision itself, here, today.

COMMISSIONER HILLMAN:

No, I understand that.

MR. MASTERSON:

Okay.

COMMISSIONER HILLMAN:

I understand that. It's just that if I understand the recommendation, it's, leave VVSG 2005 alone on this particular requirement. Don't...

CHAIR DAVIDSON:

Keep it status quo.

COMMISSIONER HILLMAN:

Don't make a change to the 2005 VVSG on this particular requirement.

MR. MASTERSON:

I guess, the key distinction is that the revision to the 2005 VVSG is not the 2005 VVSG. The revision to the...

COMMISSIONER HILLMAN:

I understand.

MR. MASTERSON:

Okay.

COMMISSIONER HILLMAN:

I understand, but I'm trying to say the revision goes to the main document, right? The 2005 VVSG is the main document?

MR. MASTERSON:

No, the revision to the 2005 is its own standalone standard.

COMMISSIONER HILLMAN:

Against the 2005 -- it's a revision to the 2005. That's all I'm trying to get clarified...

MR. MASTERSON:

Yes.

COMMISSIONER HILLMAN:

...for the record.

MR. MASTERSON:

Yes.

COMMISSIONER HILLMAN:

The revision -- so, when I talk about the main document, it is the 2005 VVSG that's being revised?

MR. MASTERSON:

Yes. The...

COMMISSIONER HILLMAN:

Okay.

MR. MASTERSON:

...2005 VVSG is being revised.

COMMISSIONER HILLMAN:

Okay.

MR. MASTERSON:

Yes, absolutely.

COMMISSIONER HILLMAN:

And so, this recommendation is, in essence, if you cut through all the language, keep the language of the 2005 VVSG?

MR. MASTERSON:

Yes.

COMMISSIONER HILLMAN:

Okay.

MR. MASTERSON:

Yes, I'm sorry.

COMMISSIONER HILLMAN:

Thank you.

COMMISSIONER BRESSO:

Just a follow-up on that point. Where did the revision language come from? If it didn't -- did it come from, I guess, meetings that we've had, comments that we had from the public? I mean, obviously, they didn't come from the Standards Board since they are asking for it.

MR. MASTERSON:

Sure. The revision language came from the next iteration of the VVSG. So, this language that you see in front of you that was used in the revision came from the next iteration.

COMMISSIONER BRESSO:

Okay.

MR. MASTERSON:

So, all of the language that you'll see presented for the revision, you know, that was commented on, came from the next iteration. The language in the next iteration was more precise in some areas, and so, that's where we took the information.

COMMISSIONER BRESSO:

And that's where staff was selecting different provisions to incorporate into the...

MR. MASTERSON:

Right.

COMMISSIONER BRESSO:

...revision to 2005?

MR. MASTERSON:

Exactly.

COMMISSIONER BRESSO:

Okay.

MR. MASTERSON:

EAC staff and NIST worked together to identify those areas that would best be brought in, in that way, from the next iteration.

COMMISSIONER BRESSO:

Okay, thanks for the clarification.

MR. MASTERSON:

Yeah, thank you.

CHAIR DAVIDSON:

Yeah, another clarification to that. That next iteration was delivered to us by the TGDC in 2007, and we put it out for comments and everything. So, that's where -- it was in that revision that came from the TGDC.

MR. MASTERSON:

Right.

CHAIR DAVIDSON:

The Technical Guidelines Committee, I should say, so people understand that.

MR. MASTERSON:

And let me say, you know, I obviously work with this on a daily basis and it's insanely confusing for me still. So, I appreciate the confusion with the various standards and the language, and I'll try my best to clarify that.

COMMISSIONER BRESSO:

Okay, thank you.

CHAIR DAVIDSON:

The one question I have is, you know, we mentioned the vote by phone, but the vote by phone has never been brought in for

certification, or testing, or anything. I understand there is some people in States that are utilizing it for a certain element of meeting the requirements for the accessibility and people to be able to vote. But, I guess, playing the Devil's advocate, is there -- could they be more active and produce more information on their phone system at all? And probably not, I mean, with it being telephone, they wouldn't have a read out...

MR. MASTERSON:

Right.

CHAIR DAVIDSON:

...because it is for, basically, to service the community that has a problem of -- a visual problem.

MR. MASTERSON:

Sure, sure. I mean, the first part of your statement was exactly correct. We have not had a vote by phone submitted to us for certification. That would certainly be an interesting one for us to test, as far as our requirements, and what not. Could they improve it or offer some sort of changes? I mean, probably, technology may or may not be out there. I don't know enough about the technology available, except to say the Standards Board was extremely concerned with this. This was a big topic of discussion, and staff felt, in their recommendation, that we were still maintaining the integrity, the intent of what the standard wanted, which was, audio/visual synchronization, that the 2005 had that already and we could remove this unintended impact. So, that was the intent of the staff recommendation.

CHAIR DAVIDSON:

Okay, thank you. Any other questions?

COMMISSIONER HILLMAN:

For the purpose of the VVSG, what is the definition of visual -- is it visual display? Is that the term, synchronized audio/visual?

MR. MASTERSON:

Correct.

COMMISSIONER HILLMAN:

What is the -- I guess, it's the definition of the audio component -- I mean, the visual component, video?

MR. MASTERSON:

I'll look to see if it's defined here.

COMMISSIONER HILLMAN:

The reason I'm asking is because, looking at it this way, it's just out of context, and I'm wondering if you know when somebody votes by phone, is there the production of a marked paper on the other end that verifies what the phone vote has been?

CHAIR DAVIDSON:

It usually goes to, and correct me if I'm wrong -- well, you explain it because you see more of it probably.

MR. MASTERSON:

My understanding of, and again, we haven't seen it in the testing process, but I have seen one vote by phone system, is that, yes, it produces a physical printout of the ballot on the other end, at either the polling location, or the election office, depending on what their procedure is. So, it does produce a physical record.

And so, to, I think, answer the second part of your question, you can tell me if I'm wrong, does that record count as an audio video -- I mean, as a video display...

COMMISSIONER HILLMAN:

Um-hum.

MR. MASTERSON:

...per the definition of the VVSG? It is not defined here in the VVSG, but it has been interpreted not to include that physical paper record. That is not a video display, as we've tested it, and defined in our testing, thus far. But, we also have not seen a vote by phone system to have that kind of impact.

COMMISSIONER HILLMAN:

Um-hum.

MR. MASTERSON:

So, I'll give you an example that I think might help. Go ahead.

COMMISSIONER HILLMAN:

Well, I'm just thinking of the other unintended consequence. And that is, of not requiring this for a telephone vote system, is there any circumstance in which removing this requirement, then, has an unintended consequence? And it sounds like we don't know.

MR. MASTERSON:

It's certainly -- I guess, it is possible that it has an unintended consequence. What we -- because we're keeping -- or our recommendation is to keep the current 2005 VVSG requirement...

COMMISSIONER HILLMAN:

Um-hum.

MR. MASTERSON:

...we think we handled what might have been the unintended consequence, which is losing the usability and accessibility of having synchronized audio/visual. That would be the concern. That is a good thing, as I said, to have them synchronized in that way. And so, we wanted to make sure that we maintain the integrity of that without causing the unintended consequence of impacting the vote by phone as the Standards Board. So, to my knowledge having looked at this issue in preparing this, we thought we handled that unintended consequence. But is it possible that, you know, we did not identify another one? Yes, that is possible.

CHAIR DAVIDSON:

And isn't it true that, I mean, with us not changing it for this revision to the 2005, the next iteration we could still have our TGDC Committee review that if we felt that that was needed before we take action on the next iteration? Because they're doing reviews and additional work in that document currently, so we could have them review that, Commissioner.

MR. MASTERSON:

Yeah.

COMMISSIONER HILLMAN:

Thank you.

MR. MASTERSON:

Thank you. Are there any other questions with decision -- policy decision one, as presented?

COMMISSIONER BRESSO:

No.

CHAIR DAVIDSON:

I think we're ready to move to two.

MR. MASTERSON:

Okay. The second policy decision presented to you, today, deals with the verification of a paper record and the accessibility of that verification. As the standard reads, now, in the proposed revisions to the 2005, it requires that whatever the means of verification are for a voter, that those same means be made accessible to voters with disability. And so, that, in practice, would mean, for instance, if there's a VVPAT, it's not just enough for the voter with disabilities to be read an electronic record from the system, but instead the VVPAT should be read to that voter. And there's varying means of technology that might be able to accomplish that.

The comment that was offered on this was basically that to make this change would cause a hardware change; there's no system, right now, that does this. And one of the stated goals that we had, as a staff, on working on the revision was not to cause significant hardware changes, because we wanted to stabilize the standard, not create additional standards. However, in the comments from accessibility groups and other areas, as well as during our roundtable, lots of discussion of already existing technology was had. And you all were present for the accessibility roundtable, and actually, one of the participants showed some of those technologies that might be able to be leveraged.

And so the staff, in looking at that information, reviewing the transcript from the accessibility roundtable, and reviewing the comments, as well as looking at the HAVA requirement that states, in part, "The voting system shall be accessible within individuals

with disabilities,” felt that this revision to the 2005 VVSG needed to include the Board of Advisors’ comments, which is presented to you, which states, and I want to read part of their comment, because they recommend language to us, and I think that’s important to capture, they recommend under 3.3.1(e) which is headed, “Verification of a paper record by the voter,” they say, “The standard shall specify that an accessible voting system shall enable the voter to verify a paper ballot in the same style and manner as the ballot was generated, so large text size, audio, et cetera.” They recommend, “Sub standard 3.3.1-E.1 shall be deleted and recommended changing the requirement to read as follows: If the accessible voting station” and that’s what Acc-VS stands for, accessible voting system, “uses or generates a paper record or some other durable human readable record that can be the official ballot or determinative vote record, then the system shall allow the voter to verify the paper record using the same access features as were used to generate the ballot. Voting equipment or systems currently in use are not subject to these accessibility requirements. As of January 1, 2013, systems submitted for complete end to end testing shall meet this requirement.” So, the Board of Advisors, in their deliberations, in developing this recommendation, recognized that no systems currently, either in certification, or in the marketplace, can do this, but felt it was important that we set a milestone for manufacturers to meet this, and so, that’s why they picked the January 1, 2013 deadline to give manufacturers time to develop, but set a hard line for when they’re going to need to meet this requirement for verification.

And so, the staff in our recommendation recommends that we adopt the intent of the Board of Advisors recommendation, and I'll clarify that in a second, with the understanding that the EAC will work with NIST in order to make the wording more precise and testable.

In addition, and I think this is important and it was brought up at the accessibility roundtable, and it's a very important point I think, in order to facilitate this transition, EAC will work with the manufacturers and the accessibility community to understand the technological challenges and facilitate the development process for machines for these requirements. And examples of this that were offered at the roundtable that I think we need to pursue include facilitating accessible technology vendors meeting with voting system manufacturers. To our knowledge there's been, you know, certainly individual meetings, but we would like to encourage or help facilitate our manufacturers actually attending their trade shows, their trade conferences. We'd like to help those vendors work with our manufacturers to understand the technology that's available and see if it's implementable. That was a suggestion that was brought at the roundtable and we thought it was extremely valuable.

To clarify the first part of this, because it's important, in our recommendation we say, adopt the intent of the Board of Advisors recommendation. That's simply there not to change the wording, you know, to impact what they wanted, but instead, as you all are aware, requirements need to be precise and testable. That's why we're revising the 2005. And so, we want to give our partners at

NIST the chance to make the requirement more testable, if necessary. So, it would simply be, standards wordsmithing. It would not change the intent of what the Board of Advisors wanted in this recommendation, but instead, create a level of precision to the wording that the Board of Advisors has already presented to us. So, that's why it's stated that way, because we do want to make sure that our standards and our specific requirements remain as precise as possible. So, that's why we have it worded that way.

CHAIR DAVIDSON:

Questions?

COMMISSIONER HILLMAN:

Yeah. The standard, as it's worded here, right under decision number two, it says, Volume 1, Section 3.

MR. MASTERSON:

Um-hum.

COMMISSIONER HILLMAN:

Okay? "If the Acc-VS generates," okay. Is that the language of the 2005 standard or the proposed revision?

MR. MASTERSON:

That's the proposed revision.

COMMISSIONER HILLMAN:

So, what can you tell me is the difference between the language of the substandard comment -- I'm flipping over to page four now...

MR. MASTERSON:

Um-hum.

COMMISSIONER HILLMAN:

...and the current 2005 VVSG? Because I thought the 2005 VVSG provided a requirement that if the paper record is the official ballot, then the system shall allow it.

MR. MASTERSON:

If you'd give me just a minute, I'll read exactly...

COMMISSIONER HILLMAN:

Absolutely.

MR. MASTERSON:

...from the requirement of the 2005.

CHAIR DAVIDSON:

I think it's 3.3., maybe, 4...

MR. MASTERSON:

It should be 3.3.1.

CHAIR DAVIDSON:

...or somewhere around in there. It's in the dexterity area.

MR. MASTERSON:

I want to make sure I give you the correct one, because there's some overlap between two and three.

COMMISSIONER HILLMAN:

Um-hum.

MR. MASTERSON:

So, it's unclear in the 2005 VVSG, except you have to apply -- so, I'll start you with Section 796 of the 2005 VVSG, which is VVPAT usability, which states, 796(a), "All usability requirements from subsection 3.1" which is an accessibility/usability section, "shall apply to voting machines with VVPAT." And then, if you go to Section 3.1, there are, you know, a variety of requirements,

including requirements on the ability for the -- and I'll go to the motor skills section, so that would be the dexterity section 3.2.3 of the 2005. But, this only applies to Section 3.1, so it only applies to the usability. So, there is no -- and this has been, as you know, identified at the roundtable, a concern of accessibility groups, that the 2005 does not directly address this verification question. It applies the usability requirements in Section 3.1, but there is no clear requirement that the verification -- how the verification must be made accessible, and so, current practice with the wording of the 2005 allows for the verification to take place through a read back of the electronic record in the voting system, not directly from the VVPAT.

COMMISSIONER HILLMAN:

So, the requirement is there but not how it shall be done?

MR. MASTERSON:

Correct.

COMMISSIONER HILLMAN:

Okay, thank you.

COMMISSIONER BRESSO:

And the suggestion is to have the VVPAT be read back, not the vote that was cast within the...

MR. MASTERSON:

Yes, it's even more general than that. The Board of Advisors recommendation that we're suggesting, as well, and let me read it to you again, because I think it's important, because it doesn't focus just on paper -- reading a paper which it addresses, but it also focuses on -- again, it says: Recommend changing the requirement

to read as follows: "If the accessible voting system uses or generates a paper record that can be the official ballot or determinative vote record, then the system shall allow the voter to verify the paper record using the same access features as were used to generate the ballot." And so, that's suggesting, not just it needs to read the VVPAT but, in fact, however the voter was interacting with the system before it needs to take that verification and create it in the form that that voter was already voting. So, if that's audio, that's how it needs to be done. If that's some sort of scanned, you know, large print up on the screen, as well as audio, that's how it needs to be presented. So, it's not just a matter of presenting audio off of, you know, a scanned record, but instead scanning the paper record, you know. And this includes, you know, op scan too, scanning an op scan ballot as well and presenting that in whatever form the voter was already using; large type with audio, just large type, whatever, so that the voter isn't having to change the means by which they are voting at that time. Does that clarify your question?

COMMISSIONER BRESSO:

That clarifies it.

MR. MASTERSON:

So, I think it's more than just the audio in that way.

COMMISSIONER BRESSO:

Okay. And with the date that was suggested of January 1, 2013, is that something that is feasible if we were to accept this policy decision?

MR. MASTERSON:

We believe it's feasible. We believe, and from the information we heard, again at the accessibility roundtable and through public comments, that this technology on its own, not in a voting system, already exists and that...

COMMISSIONER BRESSO:

I thought you said the technology didn't exist.

MR. MASTERSON:

On a voting system it does not exist.

COMMISSIONER BRESSO:

But it exists?

MR. MASTERSON:

Yes. So, the accessible technology itself exists.

COMMISSIONER BRESSO:

Okay. But it hasn't been used in coordination with a voting system...

MR. MASTERSON:

Correct.

COMMISSIONER BRESSO:

...that has gone through our certification process?

MR. MASTERSON:

That's correct, that's correct.

COMMISSIONER BRESSO:

And are you confident that test suites can be developed to address this within the timeframe?

MR. MASTERSON:

Yes. Yes, test suites have been -- draft test suites have been developed to address this, in the meantime. So yes, I'm very confident that that can be done. And that's an important step...

COMMISSIONER BRESSO:

Okay.

MR. MASTERSON:

...for this.

COMMISSIONER BRESSO:

Thank you.

CHAIR DAVIDSON:

Any other questions? We're ready to move onto three.

MR. MASTERSON:

Decision -- policy decision three deals with the use of a standard industry format jack and non-manual submission of the ballot. So, there is some overlap a little bit with what we were just talking about. Again, this deals with a Board of Advisors comment regarding dexterity issues and the ability of a voter to be able to submit their ballot without the handling of the ballot, without having to actually touch and manually input the ballot.

The comment itself, again, I want to read the two Board of Advisors' comments, so bear with me, because I think it's important to get their language on the record. Sections 3.3.4(b) and (c) in Volume 1 of the VVSG should be changed to read, "The accessible voting system shall provide an industry standard jack used to connect a personal assistive technology switch to the voting system. As of January 1, 2013, systems submitted for complete end to end testing shall meet this requirement. Adding to the end,

an exception on Volume 1 Section 3.3.1(c) to read, “This requirement shall not apply to personal assistive technology required to comply with 3.3.4.(b) - support for non-manual input,” which they will address in their next comment. “The Board of Advisors recommends that the EAC shall create management guidance regarding the needs of people with several disabilities, types of personal assistive technology switches, and best practices for poll workers in jurisdictions serving those voters.”

Their next comment goes on to say: The current standard in Section 3.3.4-c which reads, “If the paper ballot VVPAT is the official ballot of record, a voter who lacks fine motor control issues must have a way to submit the ballot without handling the paper ballot or record.” And they recommend it be changed according to the VSS Board of Advisors Voting System Committee’s recommendation, “The accessible voting system shall provide features that enable voters who lack fine motor control or use of their hands to submit their ballot privately and independently without manually handling the ballot. Voting equipment or systems currently in use are not subject to these accessibility requirements. As of January 1, 2013, systems submitted for complete end to end testing shall meet this requirement.” And I do want to add that the State of California commenting on the revision to the 2005 requirement, not the Board of Advisors recommendation, but the revision to the 2005 requirement, suggested that we delete Section 3.3.4 because no current voting equipment that’s certified, or in use in the States, can do even what the 2005 revision requirement reads. And so, the State of California, following what we had said

about not wanting to cause hardware changes, commented that we should actually remove Section 3.3.4-c as proposed in the revision, because it would require a hardware change. Again, the issues presented here deal with the HAVA requirement that voting systems shall be accessible with individuals with disabilities and hardware change.

Again, the EAC staff recommends that we adopt the intent of the Board of Advisors recommendation, with the understanding that the EAC will work with NIST in order to make the wording more precise and testable, and facilitate work between manufacturers and accessible technology vendors to ease this transition. So, it's the same recommendation as the last one, taking the date into account.

CHAIR DAVIDSON:

Well, we already have systems that's tested to 2005 meeting the requirements of 3.3.4-c?

MR. MASTERSON:

Not of the revision. The current -- we have systems that meet the current 2005...

CHAIR DAVIDSON:

That's right. But they...

MR. MASTERSON:

...but do not meet the -- in the State of California's opinion, would not meet the proposed revision language of 3.3.4-c.

CHAIR DAVIDSON:

Okay, in California they are not meeting that portion of the 2005?

MR. MASTERSON:

Again, California's comment was directly to the revision language.

CHAIR DAVIDSON:

Okay.

MR. MASTERSON:

The 2005 revision language.

CHAIR DAVIDSON:

Okay.

MR. MASTERSON:

Not to...

CHAIR DAVIDSON:

All right, existing...

MR. MASTERSON:

...the 2005 VVSG...

CHAIR DAVIDSON:

All right, thank you.

MR. MASTERSON:

...language, yeah. And so, that's what their comment was addressing.

CHAIR DAVIDSON:

All right, I misunderstood that. Okay questions?

COMMISSIONER BRESSO:

I just have a comment.

CHAIR DAVIDSON:

Okay.

COMMISSIONER BRESSO:

And I know we don't -- we have not put out the Notice of Funding Advisory for the accessible technology grant that we're proposing,

but it seems to me that the issues described in our last decision point and this one could be addressed in that grant proposal perhaps. And I'd like to encourage anybody who's watching who's interested when -- in applying for the grant when it does go out that they explore these two issues. It may help inform us for the next iteration.

CHAIR DAVIDSON:

The only problem is, is that's -- that grant is a three-year grant?

COMMISSIONER BRESSO:

Right, but it's for the next iteration, not for what we would decide on now.

CHAIR DAVIDSON:

Right. So that would -- if you -- I mean, it would be nice -- obviously, they're going to have to bring in, you know, steps of their process on that, you know, yearly or whatever, to bring us up to date on what they're doing. So, that might help us.

COMMISSIONER BRESSO:

Right.

CHAIR DAVIDSON:

But, the end result -- I don't necessarily want to hold up the next iteration for the end result.

COMMISSIONER BRESSO:

Oh, of course not.

CHAIR DAVIDSON:

Okay.

COMMISSIONER BRESSO:

But, I'm saying maybe it's something that can work...

CHAIR DAVIDSON:

Sure.

COMMISSIONER BRESSO:

...together hand in hand.

CHAIR DAVIDSON:

I understand now.

MR. MASTERSON:

I will say that there are two voting system manufacturers that I know of that as far as the submission of the ballot without manual input have proposed solutions in with us that they feel will be able to mitigate this concern. So, this technology certainly, at least in their mind, is a solvable one with this technology.

CHAIR DAVIDSON:

Well, that's good to know that they're moving forward.

MR. MASTERSON:

Yeah. And the other thing I'd add, not to introduce you know a level of confusion or concern, but as far as the standard industry jack that's the first part of this recommendation, what that means for the disability community is that they would be able to bring their own assistive technology and plug it into the system to use it. What was discussed by the Board of Advisors, and is not included in the standard, is any kind of requirement that -- or removal of a requirement that jurisdictions make the voting system accessible. So, the jurisdictions, right now, as it stands, must make, you know, provide an accessible voting system that includes, you know, ways for voters with disabilities to interact with the system. This would just be another means beyond what jurisdictions are providing to

provide that accessibility. So, an important distinction that the Board of Advisors wanted to make was that the existence of the accessible jack is not enough in their mind to make the system accessible, it just aids in making the system accessible.

COMMISSIONER HILLMAN:

So, you're saying there are voting systems in use that do not have the standard jack. Is that what I'm hearing?

MR. MASTERSON:

There are certainly voting systems in use that do not. And I would say, I don't know of a system that has the jack available to the public to use, right now. Some of the systems have the jack present on the system that's used by the jurisdiction to provide accessibility. And so, the jurisdiction will plug in their sip-n-puff, or whatever, into a jack, but it's not available for a member of the public to plug in their own assistive technology, yes.

COMMISSIONER HILLMAN:

And this recommendation and the previous recommendation talks about adopting the intent. When the items are presented to the Commissioners for a vote, is that intent going to be articulated in wording?

MR. MASTERSON:

Yes, each one of these items, obviously, in the form of the whole document will be presented to you all for vote. And so, certainly one of things the staff will do is highlight these policy decisions for you all to check, make sure, whatever, that if you adopt our recommendation that we've captured the intent of the Board of

Advisors, in that way, while still making the wording changes, the wordsmithing that needs to go on to make it precise and testable.

COMMISSIONER HILLMAN:

Is it the language that's in the document in front of us now, or it will be probably different language?

MR. MASTERSON:

It will possibly be different language. I don't want to speak whether probably or not. From our looking at it, you know, in our testing perspective, some of the language that the Board of Advisors proposes is not precise enough to make it sufficiently testable. And so, we want to make sure that it's testable. And so, I think that there could be wording changes in order to make it testable, but that does not defeat the intent of what the Board of Advisors wants. We're simply wordsmithing to make sure our labs will consistently test it.

COMMISSIONER HILLMAN:

And I understand the need for the precise language for testing. I think I've got a little bit of discomfort if I get something in front of me to vote on that says "adopt the intent" because ten well educated reasonable people...

MR. MASTERSON:

Certainly.

COMMISSIONER HILLMAN:

...can have different interpretations of intent. So, the wording needs to be clear enough so that intent can't get too far from the original concerns.

MR. MASTERSON:

Okay.

CHAIR DAVIDSON:

Mr. Wilkey, did you have something?

MR. WILKEY:

No.

CHAIR DAVIDSON:

No? Okay, all right we're ready to move on.

MR. MASTERSON:

The next policy decision deals with the naming convention for the Voluntary Voting System Guidelines. And there were two significant comments that relate to this. One, I'll draw your attention to. And I'd like to revise, actually, my testimony, and correct my testimony that was submitted for the public record to include -- I referenced a letter from Verified Voting from June 25, 2009, that was sent to the Commission and all the Commissioners, and I neglected to include it in my formal testimony submitted for the record. So, I would like to revise that to include it, because I did reference it and say it was attached. So, that's one of the comments that I want to make sure that's in there.

In addition, the Board of Advisors submitted a comment to this. And so, the Board of Advisors comment recommends, for the naming practices for the purposes of the standards that we test to, that the 1990 Voting System Standards be Version 1, that the 2002 Voting System Standards be Version 2, that the 2005 VVSG be Version 3, that the revision to the 2005 VVSG be version 3.1, and then, that the next iteration, when adopted, would be Version 4. And they offer various reasons for that.

In addition, the Verified Voting letter encourages us -- references Section 2.2.2(e) of HAVA and encourages us to view the 2002 VSS as the first set of VVSG, so basically, Version 1.0 of the VVSG. So, those are the two comments that the staff received on this issue.

The issue presented here is one of version control of the VVSG and naming convention. As currently adopted and published, the 2005 VVSG is currently versioned as Version 1.0, and that includes on our copyrights that we have for our certification. So, when a system is certified to the 2005, it says on the certification, it's copyright 2005 VVSG Version 1.0.

CHAIR DAVIDSON:

Matt, can I ask you a question? Has that been done since we put that in -- voted on that since 2005, December 2005?

MR. MASTERSON:

Part of what was voted on in 2005, and approved as the 2005 VVSG, is that it was Version 1.0. That's on the actual -- my copy of the VVSG, right here. The versioning says Version 1.0 on it as part of the adopted copy. And that's what's included in our copyright.

Issues that present themselves here are, in order to change this version the EAC would need to reopen -- possibly reopen the 2005 VVSG to reversion it. In addition, the 2002 VSS was adopted by the FEC, and it's unclear, at least to us as staff, what the process for opening the VSS and republishing it as Version 1.0, as well as the 1990, to address the Board of Advisors comment would be. In addition, if these naming conventions were adopted the EAC would be forced to at least revise or abandon its existing

trademarks, and apply and pay for trademarks for the new naming conventions.

So, based on those issues presented, the staff recommends keeping the 2005 VVSG as Version 1.0. This revision to the 2005 VVSG would therefore be called Version 1.1. And then, when the next iteration of the VVSG is completed, it would be Version 2.0, because it is a total rewrite of the 2005 VVSG. This recommended naming convention follows standard NIST and ISO protocols for naming conventions of standards, where the agency responsible for the creation of the document controls that version of the document. So, that's the staff recommendation in reference to this.

CHAIR DAVIDSON:

Questions?

COMMISSIONER HILLMAN:

Do you know if VSS, the Voting System Standards adopted in 1990 and 2002, have numbers?

MR. MASTERSON:

I do not know that. I do not believe they do, but I can check that.

COMMISSIONER HILLMAN:

Do you know Mr. Wilkey?

MR. WILKEY:

They were never numbered, no.

COMMISSIONER HILLMAN:

They were not? So, they're just referred to as the 1990 VSS. Can you tell me what HAVA says about EAC's use or adoption or inheritance, or whatever the language is, of the 2002 VSS?

MR. MASTERSON:

Sure, and I'll read directly from Section 2.2.2(e) of the Help America Vote Act, which says, "Special rule for initial set of guidelines. Notwithstanding any other provision of this part, the most recent set of voting system standards adopted by the Federal Election Commission prior to the date of the enactment of this Act shall be deemed to have been adopted by the Commission as of the date of the enactment of this Act as the first set of voluntary voting system guidelines adopted under this part."

COMMISSIONER HILLMAN:

So, should we have following that called the VVSG 2.0? In keeping with the spirit of HAVA, were we supposed to do something to take the 2002 VSS as our own?

MR. MASTERSON:

I believe -- it's my opinion that in the way that the testing and certification program was set up, we took what HAVA said and used that intent or spirit, as you said, of HAVA, in that we tested to the 2002 VSS until such time as we -- the 2005 came. So, we took it as our own for the purpose of testing. And that's what the standards are there for. So, we did, you know -- in my mind, what this section of HAVA is telling us to do is take and use this in your testing program, until you have the VVSG in place and implemented. And that is exactly what we did.

COMMISSIONER HILLMAN:

Thank you.

COMMISSIONER BRESSO:

I have a question.

MR. MASTERSON:

Sure.

COMMISSIONER BRESSO:

You state in the staff recommendation that the recommended naming convention follows standard NIST and ISO protocols, where the agency is responsible for the creation of the document controls that version of the document.

MR. MASTERSON:

Um-hum.

COMMISSIONER BRESSO:

Are you -- and you may not be aware of this, but if you are, are other standards, do they have laws like we -- that was prescribed in HAVA to adopt it from another agency to make it their own, to then start the naming of the document?

MR. MASTERSON:

Sure. I know of no specific instances where that's the case where...

COMMISSIONER BRESSO:

So HAVA is unique?

MR. MASTERSON:

In my knowledge HAVA would be unique, in that case, where it calls that out, yes.

COMMISSIONER BRESSO:

Where it's telling us to adopt another agency's version and make it our own?

MR. MASTERSON:

To my knowledge.

COMMISSIONER BRESSO:

Okay.

MR. MASTERSON:

Yes, to my knowledge.

COMMISSIONER HILLMAN:

I would say I suppose it gets further confused. And since we didn't do this, it's just an esoterical or academic discussion, but there were voting system standards under the Federal Election Commission. And their voting system guideline – voluntary -- important voluntary voting system guidelines. Even though they were voluntary before, they didn't have the extra "V" attached to the name, but they're guidelines. So, whether or not EAC should have done something formal, with the 2002 VSS, doesn't matter now. But we are using a different named document, a difference. Everybody says, "Well they're still standards," but there was a reason why Congress called them guidelines and not standards. They could have authorized EAC to issue standards, but they didn't, they said guidelines. So...

CHAIR DAVIDSON:

And I even think about, I mean, like Matt stated in his testimony, that we currently have the number on our standards for the 2005, as 1. So, what kind of confusion will we cause in equipment or in the public if we renumber? And what kind of cost are we looking at if we go back and renumber and create our seal of approval? There's more to this than just what we're talking about right now. In my mind, it's possible confusion, and then, also, cost element to this. I don't know if we've looked into the cost, at all, of what that might be.

And I kind of look at Ms. Nedzar, and then, also Mr. Masterson, do you know of anything that we've looked into in those areas?

MR. MASTERSON:

I mean, our division can certainly provide you all numbers as far as what it costs in order to get the initial trademarking of our certification and, therefore, what it might take to revise in that way. As far as the impact, you know, going back and working with the FEC in some way to change the name, whether that would be necessary, I don't know if Counsel has any thoughts. I know you all looked into this in the past when we have looked at this. So...

MS. NEDZAR:

The trademark application process costs about \$500 exclusive of any publications that we would have to make. So, that means to trademark the seal, so that no one else can use it in commerce in a way that isn't intended. I'd have to look into this, but the EAC may have to republish the entirety of the VVSG with the new name, and then, all the references to the different versions in any other place that it has previously been published. There may be a way to change what has previously been published in the *Federal Register* by reference, which would cut down on the costs. But as you know, publishing one page in the *Federal Register* is approximately three to \$400.

CHAIR DAVIDSON:

What kind of time are we looking at if we changed it, also, is another element that -- could this hold us up?

MS. NEDZAR:

For the trademark process...

CHAIR DAVIDSON:

I mean, this is really -- we've got to really see this as more important than what some people might think.

MS. NEDZAR:

For the trademark process, when we went through it for the 2005 VVSG and the 2002 VSS, it took us approximately six months. And that incorporates the time that we need to file for the application, the time that it has to be published, so that someone else in the marketplace can say, "No, that's my trademark item, it can't be used in this way," and then, for us to finalize the process. For the publication in the *Federal Register*, that would depend largely on whether we can do an incorporation by reference, or we would have to republish the entirety of the document. I am hopeful that we could work with our colleagues at the *Federal Register* to come up with a solution that would cut down on the cost and the time, if you were to adopt a change in the naming convention.

CHAIR DAVIDSON:

Any other questions, Commissioners?

COMMISSIONER HILLMAN:

I have a question in my mind that's related to this, even if it doesn't sound like it.

Are systems being tested to the 2002 standards, or no, right now?

MR. MASTERSON:

Yes.

COMMISSIONER HILLMAN:

So -- because I get confused when we say, well, once we fully adopt and implement the 2005 VVSG, then, systems would have to be tested to that, but then, we're still testing to the 2002. Once we adopt and implement the revision to the 2005 VVSG, then, systems -- so will we really have a cutoff date? Or how much longer are we going to be testing to the 2002?

MR. MASTERSON:

Sure.

COMMISSIONER HILLMAN:

I just want to see if it makes a difference in what we call any of these documents.

MR. MASTERSON:

And that's a good segue, actually, into the last policy decision, too, which is great.

COMMISSIONER HILLMAN:

All right, I like segues.

MR. MASTERSON:

Yeah. The answer is, we're testing systems still to the 2002, because those systems have not shown conformance yet. They were submitted prior to the cutoff date that the Commission selected, December 13<sup>th</sup> of 2006. They were submitted prior to that and they still have not shown conformance yet. They're still in for testing.

COMMISSIONER HILLMAN:

Four years? Four years?

MR. MASTERSON:

Yes.

CHAIR DAVIDSON:

They may -- they may have held it up and not submitted -- I mean, they may have applied, but they didn't bring it in for testing immediately.

MR. MASTERSON:

Testing may not have begun. Technically, it's in for testing as soon as the application is approved. But there was -- you know I remember this date very well, December 13<sup>th</sup>, because we were in Austin, discussing the next iteration, ironically, when that race to the door was happening. And so, we got a flurry of activity to get submitted to the 2002, prior to the 2005 being fully enacted with, you know, no submissions allowed other than to the 2005. And so, since that time, we have one more active system that's still being tested to the 2002, under that.

COMMISSIONER HILLMAN:

Is there no cutoff date? Could they be here in 2013 still testing to the 2002?

MR. MASTERSON:

As are -- I'm glad you asked that because it's an issue we deal with on a daily basis and talk about. As the policies in the Testing and Certification Manual stand now, yes. The way our system is structured, currently, a system -- as long as the manufacturer's curing the discrepancies found in testing, the system can stay in testing so long as they're showing that they're actively curing what's being found in testing. And we have provisions in the lab manual that say a system must be actively in testing and the lab must notify

us if it's not actively in testing. So, as long as the manufacturer is staying active curing the discrepancies identified, it could.

Now, I mean, an issue that we're looking at, for the future, are, basically, system readiness for testing. Before a system's application is accepted, the system needs to show itself to be ready to be tested to eliminate this exact issue. So, that's something that we, as a staff, are examining to eliminate this problem.

COMMISSIONER HILLMAN:

I can't imagine it's very cost effective to keep a system in testing for years.

MR. MASTERSON:

Certainly, the cost of testing issues that you all certainly heard about are impacted by a system being in for three-and-a-half years.

COMMISSIONER HILLMAN:

I would think so.

MR. MASTERSON:

Yeah.

CHAIR DAVIDSON:

You know, when we approved the Manual, I'm going back in time, but if my memory serves me correct, we had testimony from NIST that while a system was being tested and was meeting -- coming back and meeting that they continued testing that that was usually the approach that was taken. Am I correct, in that, in my memory?

MR. MASTERSON:

It depends. I know that's a very lawyerly answer. But it really does depend on the nature of this. I know from working with folks at NIST that several of their testing programs, if you have one failure

you fail. But there are others that do do it this way, where, as long as you're curing the defects. The reasons for that were many at the time of the passage of the Testing and Certification Manual, including practicality, you know. One failure you're out, you're back in. One failure you're out, you're back in, you know. Jurisdictions needs these, as you all know, and so, constantly failing out, coming back, failing out, coming back was not a practical approach to try to get this system tested. But we've learned a lot through this approach, as well, that I think we'll apply to the next revision of the Testing and Certification Program Manual.

CHAIR DAVIDSON:

Very good, thank you. Questions -- other questions?

COMMISSIONER HILLMAN:

No, thank you.

COMMISSIONER BRESSO:

No.

CHAIR DAVIDSON:

All right, we're ready to go to -- segue into that last one, as you said.

MR. MASTERSON:

And I think Commissioner Hillman this addresses part of what your last question was, which was, when will this revision take effect and what is the cutoff date? And we did receive a comment, because we didn't put an effective date in the draft of the 2005 revision, and the reason for that was we didn't have any ideas on that yet. We knew that that was a policy decision that was coming and we wanted to collect enough information to be able to present it to you

this in form as a policy decision. And so, ACCURATE did comment and say, "Hey there is no implementation date." And that was intentional, because we wanted to see the impact of this, see what could be done. The original idea, quite honestly, was to have it become effective almost immediately, you know, a month, a couple weeks, because the idea was not to reform the standard that much; that our labs should be able to pick up and test right away. Well, we now know that not to be practical because of implementation of the test suites. The labs, no matter how good the test suites are that NIST is preparing for this revision, the labs need time to revise their internal test cases to fit the test suites.

And so, in creating our recommendation, we looked at the amount of time the labs were going to need to take -- well, first for NIST to finish the test suites that are being prepared, and then, for us to work with the labs to implement them. And so, we selected July 1, 2011, as an estimated approximation of ten months. We wanted to give about ten months for the labs and manufacturers to adjust, and then, this revision of the 2005 to become implemented. Just as you all did with the 2005 VVSG, that would be the cutoff date. That would be the time anything, modification or otherwise, submitted after that date, would be tested to this standard, because this standard is that much different to the 2005. But we do need to implement the test suites, and there are some changes that manufacturers are going to have to make that will have an impact.

COMMISSIONER HILLMAN:

So, manufacturers would have until June 30<sup>th</sup>, I think there are 30 days in June, to submit a system to be tested under 2005?

MR. MASTERSON:

That's correct. And I would add that our recommendation includes that they could submit to be tested to the revision in that timeframe, as well, so that they could opt to that.

COMMISSIONER HILLMAN:

What would be the benefit be one way or the other?

MR. MASTERSON:

It would depend. There's, you know, certainly, I would think at least some marketing advantage. And certainly one of our manufacturers, when the 2005 was adopted, felt this way, to having your system certified to the most up-to-date version of the standard. The other is, there are some flexibilities created by this revision, and a really good example of that is the coding standards. The proposed revision has updated coding standard requirements that provide flexibility to the manufacturer. They're not as strict, to a certain format, but instead allow manufacturers to use -- to publish coding practices. That's a change that allows some flexibility and it was based, quite frankly, on comments we received from manufacturers and members of the public saying, "Your coding standards are too prescriptive. You should have a more open, published requirement." So, that may be of an advantage. A manufacturer may say, "We need a published coding standard and not this kind of own coding standard prescribed by the 2005 VVSG." So, that may be another reason to do that.

COMMISSIONER HILLMAN:

Thank you.

MR. MASTERSON:

Yep.

CHAIR DAVIDSON:

In your meeting with the manufacturers this next week, will this subject come up?

MR. MASTERSON:

Absolutely, absolutely.

CHAIR DAVIDSON:

I think it's important that you report back to us on that...

MR. MASTERSON:

Okay.

CHAIR DAVIDSON:

...after you have the meeting with them...

MR. MASTERSON:

Sure.

CHAIR DAVIDSON:

...on that issue. Commissioner Bresso, do you have any questions on this?

COMMISSIONER BRESSO:

No I'm fine, thank you.

CHAIR DAVIDSON:

Any other questions on anything that Matt has proposed? And since I'd like to have a report back from the manufacturers, and I understand that we think that we could make sure that -- and I'm sure that NIST feels -- you've worked with NIST that feel like they can have the completed test suites by time to get them implemented into the labs and the labs are okay with this time

factor also? I mean, there's work that the labs are going to have to do to be prepared...

MR. MASTERSON:

Sure.

CHAIR DAVIDSON:

...for it, obviously.

MR. MASTERSON:

Sure.

CHAIR DAVIDSON:

And I just wanted to make sure that what you're getting from -- we've got to set a deadline and not everybody is going to agree with it...

MR. MASTERSON:

Um-hum.

CHAIR DAVIDSON:

...but just that some of them are saying, "Yes, this will work."

MR. MASTERSON:

Sure, yeah, and that's legwork that we've already done in setting this day and we'll continue to, you know,...

CHAIR DAVIDSON:

Okay, all right.

MR. MASTERSON:

...to make sure you all have all the information you need.

CHAIR DAVIDSON:

If you've already done it, I feel more comfortable.

MR. MASTERSON:

Sure, as far as the labs and NIST and the manufacturers. But again, we're meeting with them and we'll provide that information as requested.

CHAIR DAVIDSON:

Okay, all right. All right, any other questions for Matt?

COMMISSIONER BRESSO:

No.

COMMISSIONER HILLMAN:

No.

CHAIR DAVIDSON:

Thank you very much Matt.

MR. MASTERSON:

Thank you, I appreciate it.

CHAIR DAVIDSON:

Then, probably after -- what I would kind of like to do is make sure that we have a report back from the manufacturers and then present the tally vote to the Commissioners. I think we'll be ready by that time.

MR. MASTERSON:

Okay.

CHAIR DAVIDSON:

Okay, gosh, I think that we're just about finished with our meeting. Is there anything that the Commissioners would like to add to the closing remarks? I have a couple of things that I would like to mention is next month, October 14<sup>th</sup>, we'll be meeting at the Sheraton Palisade (sic) Hotel in California for our public meeting and a public hearing on the NVRA. And we will focus at that

meeting on voter participation, and so, we encourage everybody that cannot attend this one, or that, is in California and that can attend that one and definitely would love to have testimony on our NVRA to please come. And the address will be up on our Web site, and all the information will be up on the Web site, so people can follow that. We're just about ready to, I think, have that contract signed, so once we have that signed we'll have that up on the Web site.

So, that's my closing remarks for the meeting. And we'll take closing remarks from the Commissioners. Do either one of you have closing remarks?

COMMISSIONER BRESSO:

No, I don't, thank you.

COMMISSIONER HILLMAN:

No, I don't, thank you.

CHAIR DAVIDSON:

All right, we'll now adjourn this meeting at 12 o'clock, and then, we'll see you back at 1:30 for the public hearing for the NVRA.

Thank you so much.

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[The public meeting of the EAC adjourned at 12:00 p.m.]

bw/add