United States Election Assistance Commission

STANDARDS BOARD

Held at
DoubleTree Hotel
At the Entrance to Universal Orlando
5780 Major Boulevard
Orlando, FL 32819

Friday, February 27, 2009

The following is the verbatim transcript of the Standards Board meeting of the United States Election Assistance Commission (EAC) held on on Friday, February 27, 2009. The meeting convened at 9:09 a.m., EDT. The meeting was adjourned at 4:34 p.m., EDT.

PUBLIC MEETING

CHAIR BARTHOLOMEW:

Good morning, welcome back. I'd like to hit just a couple quick reminders for you. If we can, again please turn off your BlackBerries. You can leave them on as long as they're not connected to the Net. Additionally, if you could take off the ringers. And if we could remember to press the microphone on and off while speaking and say where we're from and who we are.

We'd like to start off the morning, and I see that we're one Board member short, so what we'll do is initially have Peggy and Sarah have an opportunity to address you. And then we'll move forward and I'll introduce the new Board members once more, and we'll move into the meat of our meeting.

So with that, Peggy would you like to start?

MS. NIGHSWONGER:

Well, I just want to say that this has been a really good experience for me being on this Board. So when we send out nomination requests and you want to -- you know, don't be bashful about requesting -- or nominating yourself to be on a Board like this because it's really been a great learning experience for me. And I think the other thing it has been is a great experience for my state. Now my county person here might disagree with me on that but, you know, it just gives you kind of a more broader -- you get broader thinking going on when you do things like this. And so I

have really enjoyed my time on the Executive Board of the Standards Board.

I, sort of, became president by default kind of at the beginning of this Board. Mike was the president and he resigned his job. So it seemed like my term kind of went on and on and on forever as president, but it was really just a very good experience. And I would encourage all of you to jump right in there and get busy on this Board and be willing to serve because it's really a good experience. And so, I'm going to miss you all. Is it lonely up there at the top? Yeah.

So, anyway, it's been a very good experience and I've appreciated working with all these wonderful people.

[Applause]

MS. JOHNSON:

Yeah, I just want to say thank you all. I was laughing with the Executive Board in our Executive Board meeting that I feel like I need a shirt that says, "I survived the Austin meeting" with all of the VVSG and you all that were on the Board and the 55 billion resolutions that we put together on the VVSG. So it's been great. I've enjoyed my four years. Peggy and I are, I guess other than Larry Lomax, we're the last three from the original appointment after HAVA passed of the Executive Board, two two-year terms, and you guys have had to see us up there for four years. And I know you're going to miss us but, you know, it's kind of nice sitting down here so we can throw stuff at you all. But it has been great. I really appreciate it.

I think this Board has grown a lot and I think that through our resolutions and through involvement we've sort of flexed our muscle as a Board in what our job is, in what our role is with the EAC, and I think they know we're here, and we're going to stay and we're going to follow with our statutes. And it's been great to work with everybody in the EAC staff And I love sitting down here and it's just as cold down here as it is up there.

[Applause]

CHAIR BARTHOLOMEW:

And with us here on my left are the new members of the Executive Board, and I'll have them stand up as I introduce them. We have Secretary Beth Chapman.

[Applause]

CHAIR BARTHOLOMEW:

Leslye Winslow.

[Applause]

CHAIR BARTHOLOMEW:

Jim Silrum.

[Applause]

CHAIR BARTHOLOMEW:

We're missing a Donald Palmer. Oh, he's over there.

[Applause]

CHAIR BARTHOLOMEW:

And then we have two absent members. We have Larry Lomax and Brad King. And that's your new Executive Board.

At this time I'd like to turn the microphone over to Commissioner Beach.

COMMISSIONER BEACH:

Hi, good morning. To start off our second day we have Steve Stigall who will be discussing Cyber Vote Fraud for us.

MR. STIGALL:

There's an interesting reason why I'm here today. I'm not here to produce any, you know, smoking gun that shows you that electronic voting is insecure or anything like that.

For several years, I've worked with others in my organization to try and identify foreign threats, emphasis on "foreign threats," to important U.S. computer systems. A few years ago it occurred to us that that should include potential foreign threats to the computers upon which our elections in this country are increasingly dependent.

Now, obviously, the first question in your mind is, okay, did my organization actually discover any foreign threats to the computers upon which our elections are increasingly dependent? I'm just going to say this, we're in an open, unclassified forum, rest assured that were we ever to discover specific and credible information about foreign threats to our critical U.S. election computers we would do in my organization what we've done since 1947; we would bring that attention to the most senior policymakers in the country and they would act accordingly.

What I'm here to do today is to share with you the results of some research that we undertook some years ago, and which we continue to do. Basically, when I look at an election system, I'm not an election analyst. I'm not a political analyst. We have folks like that where I am and they know how to parse foreign elections that

we follow. I do not look at an election system the way a political candidate would look at it. I do not look at an election system the way a party chairman might look at it, the way the media looks at it. When I look at an election system, I see a computer system, because increasingly that's what they are. And to the extent that there are foreign hackers who have shown interest in developing unauthorized access into U.S. computer systems, that's where I get interested in it.

What I did was, I looked at foreign elections in countries that are often for the first time trying to have relatively free and fair democratic elections. This involves, not only the computerization of their elections but, as I said, it's often the first real election they've ever had. All of you come from different states, different parts of the country, and we're all working together to try and come up with guidelines and standards and things like that. The countries that I looked at, they have to go from typically communistic dictatorship to relatively western style democracy, and sometimes in some cases, overnight, in terms of their election system. So, all the challenges and issues that you are dealing with that have surfaced, they tend to surface in some of these countries right away, early on, and in a big way. And basically, it's those issues that have surfaced, that is what I'm going to be talking about today.

I have exactly two slides that address so-called Internet voting. I understand the issues behind that here in this country. I'm not here to address issues surrounding it in this country, but rather to share with you some of the experiences that foreign countries

have had when they've attempted this, and some of the challenges that remain for them in that regard.

Again, a couple of important points to lay out where we're going here. Where I come from, we do not do vulnerability assessments of any U.S. systems. We don't look at U.S. systems. What we do is we identify foreign threats to those systems and we relay that information via a variety of mechanisms to the owners and operators of those systems. Typically, the owners and operators typically, but not always, are going to be the U.S. Government. And that's basically what we do. That's the line of work I'm in. And, secondly, I'm not going to go down here and address specific types of, you know, voting machines or specific companies that are making voting machines or anything like that. I'm not going there. We're talking about the foreign experiences that other countries have had as they attempt to computerize their elections, as they attempt to bring their electoral process into the 21st century.

As I said earlier, I am not a politician, a political analyst. I don't look at this perhaps the way folks in your line of work do. I looked at this as a computer network, as a computer security issue. And I did not really know how to begin this research effort, so I met with our political analysts, the people who do look at elections overseas and I got some ideas on how to proceed. And basically, I came up with a model. It's an arbitrary model, but it worked I think. And basically I divide an election process in terms of the computer's role in that process into five separate steps. These don't all occur on Election Day, keep that in mind. Basically what

I'm saying -- you've heard the old adage, "Follow the money." Here I follow the vote, and wherever the vote becomes an electron and touches a computer that is an opportunity for a malicious actor potentially to get into the system and tamper with the vote count or make bad things happen. The rest of my presentation will address these basic five steps. The first one, of course, occurring long before Election Day, and the fifth one on Election Day and afterwards. But that's how we're going to proceed, one through five.

The first thing I discovered, and a lot of this may be old news to you, but again, I'm not a political analyst, so it was an eye-opener to me, is that what we saw happening is, the first thing if you're a foreign country that's again coming out of the Soviet era, for example, or some other form of autocracy, you need to update your voter registration list. Maybe you don't even have a voter registration list. And typically, these countries are doing this on computer. This often takes the form of folks fanning out across the country, you know, with laptops or whatever and writing down names. Sometimes it occurs in the foreign version of the county courthouse or, indeed, the national capitol itself in which the registrar, or whatever they call the person, they're presented with a box of documents and they say, "Here's our tax rolls," or "Here's our Census rolls" or "Here's the old voter list. Put it on a computer." And the registrar has a challenge right away, because if you encounter an error on the old list, an obvious error, someone who is deceased for example, or whatever, do you faithfully transcribe that error onto the computer system? Or do you immediately introduce

error onto the new computerized database? Or do you deliberately weed out that person's name, because you know he's dead and try and make the new computerized list as accurate as possible? Well, it's a "damned if you do, damned if you don't" situation we saw overseas in that either way you're going to have errors pop up. And I have some examples of that coming up. As you all know better than I, it's who gets to vote is often as important as anything else.

And one thing I was continuously reminded of in looking at this, if you'll look at that very bottom bullet there, I'm not so much looking at shenanigans on Election Day as I am all of the things that foreign actors try and do to effect the outcome of the election long before Election Day. In the next slide here there are some specific examples that we saw of this. I think -- and by the way, this is the country of Georgia, not the state, and I cannot emphasize that strongly enough. I'm only here to talk about foreign examples. I think we're all familiar with the phenomenon of someone who has been dead for a couple of years still appearing on the voter lists. In Georgia they raise this to a new art form in which they went back to the 18th century to try and pad the rolls; really creative stuff there.

Now this second bullet says Albania. It's actually about Macedonia. I actually discovered something three days ago. The U.S. Government has different names for that country that some people call Macedonia, and I don't want to offend any Macedonians in the audience. It's a sensitive issue what you call Macedonia, but this was in the country that some people call Macedonia. They had computerized their voter registration lists, and it turns out there was

a sizable ethnic Albanian presence in that country in Macedonia, and the folks back in Albania noticed that there weren't a lot of Albanian, if any, names on the new Macedonia voter lists. And we've seen some pretty colorful uses of the word "genocide" over the years, and I thought this one probably takes the cake; voter genocide that Albanians were accusing the Macedonians of doing.

More seriously, and one thing that you should be aware of, is this example that came out of Latin America in which a hacker did actually try and get to the computer that held the voter names, the database where the voter registration was. This illustrates a very important point, and that is any computer hooked up to the Internet either through a wire or through a wireless connection is a portal for hackers. You've heard that and I'm here to confirm it very simply. Now this example, on that bottom bullet there, according to the authorities the hacker did not actually get into that database, but he had accessed the computer where it was located. And it was just arguably a matter of time until he had figured out how to get past the various security procedures that are in place.

This again raises the issue, if you think a computer is not hooked up to the Internet there's a variety of things that also are into play. We now have, of course, wireless connections. Perhaps a wireless connection is enabled, is file sharing enabled, this kind of thing. It's no longer enough simply to unplug something, to unplug that Ethernet jack or that, you know, 56K modem wire. A computer that is hooked up to the public Internet is problematic in this regard and the computerized registration of voters is the first indication we

see that there's a potential for fraudulent behavior in the electoral process.

Here's a little quote from the Taliban in Afghanistan. "Some of us think that it's a courageous thing to vote on Election Day. For some of these countries, it's equally courageous simply to show up and register to vote." If you've got the list of the people who registered to vote, you've got a list of targets if you're a bad actor. I'll give you a second to read that.

All right, I'm going to move ahead now to the Election Day proper. If you look in the upper right-hand corner there, that is a photograph of a Venezuelan voting machine. These machines -- again I'm not going to parse particular voting machines -- it's an example of some of the things we look at. Some of the companies overseas, emphasis on "overseas," that manufacture these machines carry on their Web site information about how they have a SIM card reader, Ethernet jack, USB ports. In other words, there's ways of networking these machines. An electronic voting machine is a computer. That's the way we look at it. It has memory. It has so-called firmware, it has software built in to the hardware of the machine to tell it what to do, and most interestingly not only can it be networked but it can be interrogated from outside. It's a computer. That's essentially what it is, and because it's a computer it carries with it all the vulnerabilities that a computer has. Now I'm going to talk a little bit about Venezuela later on. We're not here to pick on Venezuela, per se, but it's an interesting example of some of the things we think can happen.

I don't really like the phrase "e-voting" because I think it's imprecise, it doesn't really tell me what I need to know. If you're talking about an electronic voting machine, that I understand. If you're talking about Internet voting, that's something else. Again, when we look at the foreign countries that we looked at, you see two models. Either the machines themselves are networked to each other at the polling station and are then connected to another computer at the polling station. And that computer is not one you cast ballots on, it's just collecting all the information from those machines. And then the voting information is sent from that computer downstream, or upstream as the case may be. Or you have a situation in which the machines again appear to be stand-alones, but at the end of the Election Day folks are removing the flash memory that records the votes. Again, these are scenarios that will not be alien to you. But what we're looking at is foreign experiences with security threats to these types of things.

The first question that one asks about these voting machines is, are they password protected? Okay, well there's passwords and then there's passwords. Is the password the name of your granddaughter? Is it the name of your pet? If it is, I'm going to have that password in an hour. Not me personally, but I mean a dedicated hacker. That's what they do. If it's a so-called "strong password", in which you use a mix of letters and numbers and special characters, you do greatly complicate the task for a malicious actor. But then you have to ask yourself, are the passwords changed from election to election or is it the same? And our favorite scenario, where I come from, is your password p-a-s-s-

w-o-r-d? You would be surprised. Again, and who has access to that password is really terribly important. And the bottom tick on this slide is really crucial so, you know, I buried it at the bottom of the slide, and that is the actual physical security of these machines long before Election Day is crucial. When I look at a foreign country, and I suspect that the regime may be playing games with the computer component of the election system, one of the first questions I ask is, where are those machines stored? Or where are they stored, period, long before Election Day and afterwards? And I want to know if those machines can be interrogated electronically remotely on Election Day. Is there a wire or a connection connecting those machines to, quite frankly, the public Internet? And I understand the wireless issue is one that has been addressed. I'll be talking a little bit more about that particular question.

Okay, again this slide I won't belabor because, again, I think you all probably know more about this than I do. The bottom line is that in all the countries that I looked at, about 36, 37 countries, all the scenarios by which they use electronic voting, they produce a paper ballot receipt. It's a part of the social contract that they have. Now at this point I will make my only hand waving generalization of the presentation, which is always risky. In the countries that I looked at, you're dealing with voters who have never seen a computer before, let alone used one. When they have elections in the past, some of these societies do not accept voter fraud, but they understand it's going to happen. And the idea of a local party boss throwing a shoebox of ballots in the river, that's part of the

background noise. They understand that a little bit of fraud at the local level will occur. When you introduce computers into the process, I found in some of these foreign cultures, you are introducing a level of opacity. You are removing a bit of transparency that makes them uncomfortable, and that's something that I think is worth keeping in mind. We tend to view computers as things that modernize, that allow certain efficiencies that would otherwise be impossible. And, again, I'm looking at foreign cultures. This is a phenomenon that emerged.

The machine puts out a paper receipt, the person sees the paper receipt. So even though they may never have seen a computer before, they can look at that paper receipt and say, "Okay, this is how I voted." The person then puts the receipt in the box. In all the countries that I looked at, you have to ask several questions. First of all, if there is a discrepancy at the end of the day between the machine count and the paper count, which has legal priority? Some countries spell that out very clearly. Other countries, like Russia, it's kind of vague, and maybe deliberately so, I don't know. Also, they have to determine what will trigger an automatic recount. What will be the required difference between the two counts before you have to have a recount? In some countries -- in one country, for example, the difference is only one percent. In another country the difference is .001 percent. I can't do the math standing up here. I think that's two orders of magnitude is it? So different countries are going to have different, you know, standards for the difference that they're going to allow between the paper count and the electronic count.

Now, again, what I said, in a traditional voting scheme the greatest opportunity for fraud that we have seen in other countries, is at the local level. When you introduce computers into the equation, you're moving that fraud potential upstream and you're allowing an electronic single point failure, meaning the potential for mischief, can occur higher up the food chain electronically much faster and affect a lot more people in terms of the vote count than would be the case of fraud at an individual level where again you're talking about the classic scenario where ballot boxes get thrown in the river or fraudulent ballots get produced; here it's electronic.

One of the cases that we looked at in terms of the potential for messing with the computers at the local level, is, what kind of voting machines are you using? For example, in Russia they cannibalize whatever computer they can find, in many cases. Often this involves classroom computers that kids are using one day in the classroom and the next day it's, you know, blessed as a voting machine. They go in and they put software in it. And, of course, then you have to ask yourself how good was the security check on the computers that they're using for this? It may not be an issue in this country, but it's a huge issue overseas. What computers are you using? Are you cannibalizing just regular desktop computers to be voting machines? Or are you bringing in dedicated voting machines? In Russia, again, 94,000 precincts. I refer to Russia often in this briefing, simply because it's a country I've studied closely, and they provide us with a lot of interesting examples of this phenomenon.

We did see an interesting situation develop in Venezuela in 2000, and this is a matter of public record. At that time there were 19,000 of those voting machines I showed you a picture of earlier in the country. It's important to understand that Hugo Chavez controlled himself, his people, every facet of the computer side of that election. I don't like reading from slides, and I will not do so here. The bottom line is it was all covered. All parts of the chain of custody were under his control or the control of his people. Now what happened was, there was a referendum in Venezuela in August of 2004 about whether or not to recall Hugo Chavez, and it was basically a "yes"/"no" kind of vote. They had the vote; Chavez won, in that the recall petition was defeated. And what happened afterwards was kind of interesting. Usually, when I give this presentation, I've got two different colored markers and I can go to the board and illustrate this, so I'll have to do it verbally here. Basically, some Venezuelan mathematicians crunched the numbers, and they looked at the differences between the vote that Chavez got when he originally ran for President, I think in 2000, and the votes that he got in the recall referendum in 2004. And they discovered that the delta between those two counts, in certain areas where they believed Chavez support was weak, was consistent across the board. In other words, in those areas where Chavez knew he was going to need some votes, the difference between the number of votes he got in 2000 and 2004 was the same from region to region. And the mathematicians produced lots of interesting facts and figures in the statistics to show that this was statistically really not possible. And they used that as an argument

that Chavez, because of his complete control of the voting machines and their infrastructure, that Chavez was able to insert computer code into the system to adjust the vote surreptitiously. Now understand this is nothing as blunt as a vote against Chavez registers as two votes for him. It's not that blunt. It's much more subtle a situation, in which a vote against Chavez registers as 1.1 votes for him. I'm making this up to illustrate the point. It was a very subtle algorithm these people think they had found.

But there's a problem, and you immediately will see what the problem is in red at the bottom of the slide. You have 19,000 voting machines each spitting out a paper receipt, people are walking that receipt over to the box, putting it in the box and it's the paper receipts that are going to be counted at the end of the day, they push a button on the voting machines, the voting machines say this is how many votes were cast on me, you count the number of ballots and there's a difference in the outcome. So we had to ask ourselves, how do you defeat the paper trail? How do you defeat the paper ballots that the machines spit out? Those numbers must agree, must they not, with the electronic voting machine count. How do you defeat the paper ballot? It turns out -- in order to figure that one out you've got to stop thinking like a political analyst, you have to stop thinking like an academic or a person from the media, or whatever, who follows the election as an unfolding story, and you have to start thinking like a third-world autocrat. You can defeat the paper vote count by giving the paper vote to the guys with the guns, and they put the votes in boxes and put the boxes on trucks and take the trucks off to the military barracks for safe keeping. CNE in

Venezuela is the national election commission and that was the charge that was made. Again, you had the paper vote count, the electronic vote count. So you have to figure out how to reconcile those two if you're going to commit fraud. And that's -- in this case he simply took a gamble.

Now I'm going to back up one. If you look at that second bullet, okay, we're going to audit some of the electronic voting machines, and we're going to audit them at random. Chavez agreed to allow 100 of the 19,000 voting machines to be audited. If a huge pattern or a significant pattern of discrepancy arises, okay, he has a problem then. It is my understanding -- emphasis on that "it is my understanding" -- that the computer software program that generated the random number list of voting machines that would be randomly audited, that program was provided by Chavez. That's my understanding. It generated a list of computers that could be audited, and they audited those computers and, you know, no pattern of fraud there. But, again, if you are bent on large-scale fraud at the national level, and you know that you've got a problem between the paper count and the electronic count, you've got to do something about that pesky paper count. And this is one scenario by which that may have happened.

A huge issue for us, as we look at this issue is, how do you get the votes from outlying precincts back, typically, to the capitol of the country? Again, as you all know better than I, in foreign countries you, typically, have one central national level election commission as opposed to, you tell me. This is a huge issue if you're a country in Southeast Asia, that your country consists of

80,000 islands in Archipelago, for example. It's nice to have results come in so that people know who won the election the next day, rather than wait three weeks for all the ferries and such to come in from different islands with the vote count, or people to phone them in. You solve a lot of problems for these countries when you transmit them electronically real time on Election Night. I understand this is an issue you're looking at. I'm not going to address that here, but what the foreign experience has been is that these vote counts are typically going to be transmitted in much the same way as you would send an email attachment; that is, it's going to be an email attachment. It's going to ride out over the public Internet using Internet protocols, using protocols that a lot of people understand; good actors and bad actors. And that's why the most important thing here that we look at is whether or not these votes are being encrypted.

Now I want to say a word about encryption, because it's a scary word. People who think they know how to use their computers at home they see the word "encryption" and they dive for cover. I'm not going to go into a tutorial on what encryption is or how it works, but the bottom line is if you encrypt the electronic transmission of votes from point "A" to point "B" you greatly complicate the task of a would-be attacker who would get into that data stream and adjust the numbers; greatly complicate their task. You do not remove the threat of a so-called denial of service attack. And there's two kind of denial of service attacks. The first is where a bunch of computer guys jump all over your computer and clobber it, overwhelm it with Internet traffic and it shuts down, or you have

to shut it down. That's a classic computer denial of service attack. If this occurs on Election Night, it may not affect the actual count of the votes, but nobody looks good if they have to go in front of the cameras and explain how hackers were able to launch a denial of service attack and you can't get votes in from the outlying regions of the country.

The second kind of denial of service attack is more straightforward, you just blow up the power facility that you're using or whatever. I mean a physical kinetic denial of service and I'm not going to go there, here. The point is, if the votes are encrypted from point "A" to point "B," you greatly complicate an attacker's job. But there's more to it than that, because you then have to ask yourself is the data encrypted before it's transmitted? Is it encrypted after it's been received? In other words, so-called encryption of "data at rest." This is another important issue to look at. Again, encryption, I wouldn't say it solves a lot of problems, but it creates a lot of problems for those who would want a system to have a lot of problems.

If your country consists of 11 or 12 time zones, electronic transmittal of ballots real time on Election Night is very attractive, especially when everything has to flow back to Moscow. We already mentioned 94,000 precincts, that's a lot. I do not know how many we have in this country. Now they solved the problem in Russia, in terms of how to deal with hackers, or whomever, serious hackers, getting into the vote stream on Election Night. It looks like, in Russia, the votes are transmitted, and I don't like reading from the slides here, but the same computer systems, the same

bandwidth that they use for classified government communications is what they use to send the votes over on Election Night, which is to say the same government authority in Russia that is responsible for electronic spying, electronic eavesdropping or what people in my world call SIGINT, those are the people running the vote transmittal on Election Night. I'm here to tell you, without making recommendations, that's a pretty secure system. I'm not holding my breath waiting for a U.S. Internet banner headline, however, saying, "C.I.A. and National Security Agency to be responsible for cyber vote transmittal in the U.S." I'm not expecting that to happen, nor am I recommending it. But in Russia, they solved that problem by doing that. The ballots obviously are encrypted. Again, they're going out over otherwise classified communications. And I think the bottom bullet there speaks for itself. Russian hackers are busy making money doing other things besides messing with Russian elections. The word on the street in Russia if you're a hacker is, the government may look the other way if you hack a foreign target, but if you go against a Russian bank or a Russian government computer system, you may end up as a speed bump somewhere. So don't do that. Pretty secure system. We're going to talk more about Russia in a moment.

Again, when you look at all the reports from overseas about where computer vote fraud is most likely to occur, if you judge it simply by where all the reports in various foreign press or whatever discuss, it's pretty clear that the central election headquarters, which is where all the computers are processing the votes or the one computer, this is a place where a lot of this can occur. We

talked about the idea of an algorithm, some sort of computer program that adjusts votes as they're coming in. I have an example of that coming up. Again, the big challenge for someone who would use cyber means, computer means, to tamper with an election is not only dealing with the paper count but how much of the vote can you manipulate maliciously before you trigger an audit? And that becomes important in Ukraine, as we'll see in a moment. We discussed already the defeat or not defeat of a paper receipt.

We've heard of the so-called colored revolutions in recent years. In Ukraine they call it the orange revolution. You see all the orange banners folks are waving there. The gentleman there, Mr. Yushchenko, elected to run his country in 2004 but he wasn't elected to run his country in October of 2004, and here's why. The way this story is typically portrayed is a situation in which they had the election in October, the crowd didn't like the result, the crowd smelled fraud, they couldn't prove it, they piled into the streets and then you had the orange revolution. It was a little more interesting than that I think. What happened was, they did have the vote in October. There were allegations of fraud on the part of Mr. Yushchenko's opponent Mr. Yanukovich, who was sort of an old guard type of official who Moscow believed would bring Ukraine back into the Russian fold. And as we say in Washington, "Remember it's not the scandal, it's the cover-up that will kill you," because in Ukraine what happened on Election Night was they had a plan in place whereby they had introduced an unauthorized computer into Ukrainian -- the election commission's national

headquarters. They snuck it in, in essence, and they had a couple of people on the inside working it. Now I don't know exactly how this worked, but the implication is that these people were monitoring the vote count coming in from different parts of the country, and they were making subtle adjustments to the vote. In other words, intersecting the votes before it goes to the official computer for tabulation. Now at that point something very interesting happened. The head of Mr. Yanukovich's campaign, his campaign director, started making a series of cell phone calls to these guys on the inside and he's asking them, "Did you erase the log files? Did you cover up your access? Did you clean yourselves up?" In other words, he's not really asking them, "Did you pull off the scam the way we agreed?" because it's already been pulled off. He's asking them if they did the cover up okay. Very shortly, and in short order, Ukrainian newspapers published the transcripts of these cell phone conversations. That's kind of interesting. At that point the crowds flood into the streets, public outrage reaches critical mass, there's an agreement to hold a second election in December and Mr. Yushchenko is elected. This is the gentleman whom was poisoned by dioxin you may recall. The Ukrainian example is generally not held up as a cyber vote fraud issue, but I think it can be. It should be regarded as such, as being the catalyst for the orange revolution; an interesting example of this.

Finally, on Election Night, understand that in the countries that we look at, they don't have half a dozen cable news services to report real time election results county by county, state by state. In many of these countries the Internet increasingly is the go-to

source for late breaking information, late breaking information on Election Night. And typically, what you see happen is the National Election Commission or Central Election Commission, whatever they call it, they are doing real time vote totals on the Internet on their Web site. Again, this is an example that you would see in Russia just to pull those down and use it for this purpose. Now it's very important to understand this is a Web site. When someone attacks a Web site, we tend not to get terribly excited. It's sort of the equivalent of taking a can of electronic spray paint and, you know, defacing something. But we do ask ourselves some questions. Number one, you want to make sure in these countries that we looked at that the computer that is hosting the Web site, number one, is not the computer that's also processing the votes. And, number two, is not connected in any way, shape or form to the computer that's collecting the votes. We've only seen one example overseas in which it looks like the election authorities actually used the same computer to count the votes for the country that they used for their Web site, and hackers did get into it in I believe 2004, 2005. Kind of embarrassing. Other than that, though, assuming all they do is deface the Web site, typically all they're going to do is embarrass people. They're not actually going to touch the official vote count. But to the extent that these emerging democracies in other countries, you know, are trying to do a free and fair election the right way, you don't want obviously that to happen on Election Night.

I do want to segue now, very briefly, into the question of Internet voting. I know this is an issue of great importance to you

all. I'm not here to, again, parse or critique specific proposals. Simply understand that I come from an organization that watches what foreign hackers do and other organizations, and we've seen some foreign experiences with this and they haven't figured out how to do it yet. There's one example we'll look at in a moment, Switzerland, which might be working for them. I leave it to you to discern the degree of which it would be applicable in this country. The bottom line is, we're talking, again, about any computer hooked up to the Internet. Obviously, I'm not talking about a situation solely where military personnel overseas would go to one place and cast a ballot on one machine, but everyone in their homes and offices. The UK has tried this, Finland and some of the Baltic Republics have done some experiments with it, we'll talk about a Russian example coming up and, again, where this is leading overseas -- I emphasize "where this is leading overseas" -- is voting with any mobile wireless device eventually.

Now there are some real issues that these countries have to grapple with. I defer to you the extent to which these are applicable to us. Authentication of voter I.D., obviously this is a huge issue. And in the Swiss example in a moment we'll see how they deal with that. How do you determine that the person at the keyboard, either in their home, their office, Internet cafe, shopping mall, wherever, how do you determine that that really is the person that they claim to be and that they're legally allowed to vote? This second one though is a huge issue overseas, and that's absence of duress. We're talking about a situation in which a woman may have acid thrown in her face if she doesn't vote the way her husband tells her

to vote. That's a big issue. Other scenarios from cultures where people are expected to vote the way they're supposed to vote. Also, absence of duress we have a situation in one country we looked at in which everyone in a factory was led down onto the shop floor and they had an absentee ballot station set up electronic and everyone in the factory said, "Here's how you're going to vote. I assume you don't have a problem with that if you want to continue working here." And that's again, another example of a faceless electronic vote scheme. It was done absentee before Election Day, so that the party officials and the factory officials could make sure that everybody voted the same way.

Privacy of vote is a little bit different than absence of duress, in that I don't have to tell you what percentage of computers are out there that have unauthorized malicious software on them. Do computers have keystroke loggers? Do they have other forms of scripts or software that records what you do on your computer that's violating or compromising your privacy? When you buy a computer and take it home, I am told that as soon as you plug it in, firewalls notwithstanding, anti-virus software notwithstanding, if you just plug that computer in, that within minutes, someone or something is pinging on that system to see how vulnerable it is. You've heard of the phrase perhaps "botnet," b-o-t-n-e-t, botnets which are out there in vast numbers. And botnets are basically simply large clusters of computers that have been relatively poorly defended, and hackers have gone in to them to place code on them, so that those computers can help the hacker do something on a day of his choosing. So, again, privacy of vote. Is there

software? Is there malicious software on the computer being used that would compromise the voter's privacy?

I don't have to tell you that probably 95 percent of us in this room are all using the same operating system. We know what it is. Hackers know that, too. Now I've referred a lot to hackers in this presentation, but understand I'm not really concerned about the 18-year old wannabes. I'm concerned about the 28 or the 38-year old folks who have been doing this a long time and who may be under contract for some other organization. In other words, an organized structured effort to throw an election, or to compromise a computer system in that context.

And this brings us to a great example of Russia. A few weeks ago the head of the Russian election commission, his name is Vladimir Churov, made an interesting proposal. He met with representatives of the Russian hacker community. And I do not know the extent to which this was a representative cross section of Russian hackers, but it was sponsored by Russian magazine, Hacker magazine, which is an interesting publication they have over there. And -- well, Vladimir Churov is my new hero, because he had a very interesting proposal for these people. He said, "In early March we're going to test a new Internet voting system in Russia. We're going to test it in five areas and I want you people to come at us, give us your best shot. We're not interested in people who want to harm maliciously the system, but if you want to test our system trying to identify new vulnerabilities, you know, we're going to reward you if you do this." He didn't say what the reward was. In the Russian context I'm not sure what that would be. But this is

an example of an alternative to bringing in what I call “old people.” You know old people? People in their 40s, 50s. When you know what you were doing the day some of your colleagues were born, you qualify as an old person, which is why I feel old sometimes. But you bring in -- what Mr. Churov is proposing is something different from a controlled red team experiment where you bring in, you know, old people to test your system. He’s talking about turning this over to hackers in the wild, a situation in which you can be guaranteed that vulnerabilities will be discovered that you had no idea were there or, just as important, approaches are there that perhaps you had discounted as you’re developing. “Oh, yeah, we thought about that but we decided that wasn’t a viable way of compromising the system.” Well, you know, some hotshot 24-year old out there may think otherwise. And Mr. Churov is going to find out one way or the other. So that’s one of the issues that we look at .

Now I did want to deal briefly with the Swiss example. It’s an interesting example. I still use it as a case study for a pilot project for Internet voting. They issued scratch cards to voters, for lack of a better phrase, the election authority did. You receive the scratch card, you scratch off the thing to reveal a PIN, you go to their Web site on Election Day and you enter that PIN into the Web site, and then they ask you a question. And I think one of the questions was what canton was your mother born in? Something like that. Canton being the rough equivalent of a state. And it was a calculated risk in a small country that if a hacker or some nefarious hacker gets your card or gets a whole bunch of cards, they’ve got

the PIN number, but they're not going to know where everybody's mother was born or some other piece of uniquely biographical information that you would have to associate with that particular card. It's a risk that they would not be able to associate that biographical data with the PIN number in sufficient numbers to throw the election. Again, it's risk management rather than risk avoidance. And, again, place of birth, this type of thing. The Swiss example worked.

The UK has tried Internet voting. One of the reasons to do it was to enhance voter turnout. They made kiosks out in public was the model that they used, so as you're walking home from work on your way to the Tube, or whatever, you can stop at the kiosk and vote. They did see an increase in voting there, but in their own words it was "statistically insignificant."

I'm just going to conclude by summarizing on this and not reading from the view graph. Again, when I look at a foreign election system I'm not probing it -- don't get me wrong. I'm not probing it for vulnerabilities to attack it, I'm simply looking at it as a computer network to see what vulnerabilities other people might be trying to use to exploit it because that reveals potential vulnerabilities that may be applicable in this country. Again, when we look at election systems overseas, to the extent that they even have computers, I look at them as a computer network and computer networks have all the vulnerabilities that any computer network has, whether it's an election system or whatever. The physical security of the machines has emerged as a big issue. Long before Election Day who has access to them? And who

programs these machines? And who has access to that programming? Again, just old-fashioned physical security long before Election Day. We talked about this sociological factor of decreasing transparency for some cultures as you introduce computers, I'm not going to presuppose that's entirely relevant here, but I add it for what it is worth. You solve a lot of -- I said you don't solve problems but you create problems for an attacker by encrypting data by turning those votes into a meaningless scramble of ones and zeros in the data stream out there. And we concluded with a note about so-called Internet voting where the foreign experience has been in the form of pilot projects, again in the UK, Baltic Republics, Russia is very serious. Russia wants to move to a situation I believe by 2010 where people can vote with cell phones. And they're very serious about that. As Russia moves to a one-party state they're trying to make their elections as accessible to everyone so that everybody can vote for the one party, but that's the irony.

I will conclude on that note. I thank you for your attention. Again I am not here to tell you that there's a smoking gun, to explain why electronic voting is a bad idea, I'm not here for that, but simply to show some foreign experiences that they have had at introducing computers into their election systems and the extent to which those experiences overseas may be relevant to the kind of work you're trying to do here. That's why I'm here. I believe I will -- shall I take questions? Or do you wish to...

CHAIR BARTHOLOMEW:

We have time.

MR. STIGALL:

Okay, a few minutes for questions. And I always forget to repeat the question, so I guess we have a mic here. Everybody can hear the question.

MS. DeBEAUVOIR:

Good morning. Dana DeBeauvoir, Austin, Texas, local. Could you please go back to the Chavez election? I'm just a little dense. I didn't quite get it as to when Chavez took possession of the receipt part of it, and I could see them in boxes and some of them even had sleeves over the boxes, what was the point of -- I can see, you know, the capture of all that information. What did they do to it to make it different? I mean it's there, it's locked inside a box. Did they remake it? Did they know...

MR. STIGALL:

The argument that the opposition in Venezuela made was that Chavez had introduced a surreptitious code into the voting system to adjust the vote. The problem is, if you get a discrepancy between what the machines say the vote is and what the paper ballots say, you've got to be able to explain that discrepancy unless you take physical custody of the paper ballots, and say there was no discrepancy, and you move the paper ballots to the barracks, military barracks. And then you assume no one is going to raise a big enough stink where you have to open up the barracks and reveal the paper ballots. That was the charge of the opposition.

MS. DeBEAUVOIR:

I get it. Thank you.

SECRETARY CHAPMAN:

Beth Chapman, Alabama. Beth Chapman, sore throat. A couple of questions. Based on your presentation today, would you be willing to say that Spain has the better model than the other countries that you've studied?

MR. STIGALL:

Ma'am, I really can't speak to Spain. I'm sorry, I can't speak to them specifically. The countries that I...

SECRETARY CHAPMAN:

I'm sorry, Switzerland. Forgive me.

MR. STIGALL:

Oh, Switzerland?

SECRETARY CHAPMAN:

Yes, I'm sorry.

MR. STIGALL:

Okay, Switzerland.

SECRETARY CHAPMAN:

Spain, Switzerland, you know. Any of those "S" countries.

MR. STIGALL:

Well, I was listening to the radio yesterday and the person on the radio confused Sweden with Switzerland, that's easy. No, I used to live in Switzerland. It's one of those countries where people are killed by falling off their farms. It's a dangerous place to live. It's a very vertical country.

Well, Switzerland -- we may think of Switzerland as being a very homogenous country, a bunch of alpine farmers there. The reality is that they've got four major languages -- well, three major languages and a fourth, very small minority. They do have four

officially recognized languages, with as many different groups within them. They also have a large immigrant population. So it is an increasingly diverse demographic group.

A tremendous sense of -- okay, my second hand waving sociological generalization so be advised -- it is a country with a tremendous sense of civic duty. When I lived there, every Saturday morning the teenagers throw their rifles over their shoulders, get on their bikes and ride out to the range to prepare to be part of the militia to do their target practice every Saturday.

SECRETARY CHAPMAN:

What's wrong with that?

[Laughter]

MR. STIGALL:

I'm saying that they have a very community view of themselves.

And the extent to which issuing cards to each voter, scratch the card, match that data with some unique biographical identifying data to you, the extent to which that would be applicable here that's for you all to determine. The Swiss example is probably the most well thought out example that we've seen, although the exact mechanics of the system that they've tried in the Baltic countries, in the UK, I'm not familiar with the exact mechanics of that.

SECRETARY CHAPMAN:

Yes, and I guess, you know, what I'm interested in, as a Secretary of State, who is really studying this issue, who has vendors coming to me saying they're doing this in other countries; those countries are Spain, Australia and the UK, which you did

mention the UK. But I'm very interested in what you're learning about those other countries, and that was not presented today.

And I guess, intentionally playing Devil's advocate here, what concerns me a little when I hear your presentation is that ballots can be taken away by a group, which we saw. Well, that happens in some of our states. I'm embarrassed to say that voters can be put under duress, which, in my state, they are, many times; that they're told to vote a certain way or they'll lose their benefits or their Social Security or their jobs; that people can manipulate the equipment, worse case scenario, people could, we hope they don't but they could. And we're not saying let's vote on anything, we're saying secure military Internet voting because the military, as I understand it, did create the Internet. So that makes it a little more credible. And we don't have a dictatorship like Chavez, where one person is in charge of everything. And we do have a checks and balances. And so, I'm asking you to tell me, or anyone to tell me, why we should be any more concerned about Internet voting, because there are less numbers of people that can hack the Internet, in the levels to which we're concerned about, than are physically hacking absentee ballots in my state.

Thank you.

MR. STIGALL:

The simple question is, and this is what we deal with all the time, it's a question of risk management versus risk avoidance. That's the short, simple answer.

Yes, sir?

MR. WEIR:

Steve Weir, from California. I'm not exactly sure of the total number of polling places in the United States, but I've always operated off of about 200,000. And I'm not exactly sure, there's others that may know that.

But I did attend a conference that talked about an Internet voting model in Australia for their military overseas voters, and the advocates of that seemed to think that there was a good Australian model for that; not blanket Internet voting, but some sort of a more secure system. Are you familiar with that at all?

MR. STIGALL:

No, sir, I'm not. Again, in a military installation, you're going to have a degree of control that increases the comfort factor. That's a fair assertion. I'll look into it.

Sir?

MR. HARRISON:

Allen Harrison, Arlington, Virginia. In your example of Switzerland, the question that occurred to me is, how do they acquire this back-up information? Where do they keep it? And how vulnerable is the back-up information that they have?

MR. STIGALL:

That hits on a very important point. We hear a lot about attacks or threats to financial systems. It is probably fair to say that financial data is some of the most best backed-up data out there, that's financial data. In the Swiss example, I don't know the extent to which it's backed up, but that is one of the fundamental boxes you need to check in terms of overall network security, is, backing

up the data and backing it up on a computer different than the one you're trying to back up.

MR. HARRISON:

Right. In the Swiss example, have they garnered something from their banking system? They're very secure with those I know.

MR. STIGALL:

One would think. That's an interesting two dots to connect and I cannot connect them.

MR. HARRISON:

Right. The other question, if I may, had to do with these paper receipts that were dropped in a box and apparently, if I understood it correctly, are they counted at the precinct level that evening?

MR. STIGALL:

Yes. That's a very important point, yes.

MR. HARRISON:

And how difficult would that be when you'd have an election that had many offices being filled and Constitutional amendments and bond issues and things of that kind? How does that work?

MR. STIGALL:

Admittedly, I think it's probably fair to say, sir, that the elections that I'm looking at overseas, the foreign elections,...

MR. HARRISON:

They're single?

MR. STIGALL:

Yes, it's you're voting for parties.

MR. HARRISON:

Yes, that would be fairly easy.

MR. STIGALL:

Now the flip side of that is in some countries there's dozens of parties. So, you know, the ballots can be cluttered in that regard, but they tend to be kind of straight up or down situations. So they are counting them at the local level making sure the electronic count matches the paper count and then proceeding accordingly if you get a problem.

MR. HARRISON:

I think, at least in my county, the security that you mentioned about transmitting from the precincts to a central place we do that by telephone. They call them in. Now we can with the electronic machines that we can still use, can't get any more of them but we still use what we've got, we don't do that because our neighboring jurisdiction tried to do that, they're much bigger, and they just had a malfunction of the telephone lines. There wasn't any hacking or anything, but we have them phoned in. But they are unofficial and they don't become official until we really look at them, and occasionally people misread. So I think we have a back-up system at least as to the reporting there that we use, and I wondered if some of these emerging countries might not have a similar unofficial and then official...

MR. STIGALL:

Actually, it's a variety. They use a variety of systems besides electronic transmittal to get votes from the outlying precincts to the capitol city. Sometimes it's a situation where they

take the flashcard out of the computer voting machine and they collect the flashcard memories in the box...

MR. HARRISON:

Yes.

MR. STIGALL:

...and then they transport those to a central election authority. But where it gets interesting is when you look at countries that do transmit it electronically because they have such a vast geography, that's how they have to do it. But telephones are used also to do it overseas. I'm primarily only concerned when I see the digitized votes touching a computer.

MR. HARRISON:

Thank you.

MR. STIGALL:

Sir?

MR. LINDBACK:

John Lindback from Oregon. I think you're getting lots of questions about Switzerland because of your assessment that that's probably the one that's the most secure that you've seen.

MR. STIGALL:

I said it's the most well thought out.

MR. LINDBACK:

Okay, most well thought out. Thank you. I was curious about their voter registration system or their civil registry, or whatever they work off of. Obviously, in each voter's record is the name of their mother's birthplace. That kind of information is not historically part of voter registration records in America. Are they

working off a civil registry that has that information already, do you know? Or do they have...

MR. STIGALL:

The short answer, is, I don't know. Again, what the Swiss are doing, is, they've made the assessment that you're not going to see enough of these cards compromised in such a way to throw an election, in that a malicious hacker would know that biographical data and be able to associate it in an automated way. And that's an important point I want to get across. I'm worried about computer fraud here, not other forms of fraud. If you're talking about a particular village or section where they've got a few dozen or a few hundreds of these cards, and they're taking the time to go back and figure out, "Okay, this guy I know where he was born, I know," whatever, I'm not really looking at the old typical kind of fraud. I'm only concerned about when electrons become maliciously tampered with.

One more?

MS. DeBEAUVOIR:

Dana DeBeauvoir. So -- just to follow-up on John's question then -- so there is a step in the process whereby the PIN number and the mother's state bump up against something that says, "Yes that's correct"?

MR. STIGALL:

Yes, on the voter -- that's a very important point. On the Web site of the election authority they have to reconcile those two numbers. And your question about whether or not that information would be pre-existing on the registration lists, that's a valid point

and again raises the issue where is the voter registration list before the election? Is it sitting on a computer that's hooked up to the Internet? Is it sitting on a computer connected to another computer that's hooked up to the Internet? Basically, that gives me an opportunity, simply, to reassert that the security of these elections that use computers begins long before Election Day and that the computers that hold that voter registration data should be nailed down in terms of their security, just as you would secure an electronic voting machine on Election Day. That's what that earlier slide on voter registration was trying to convey. You don't want it hooked up to the public Internet in terms of, you know, voter registration data if you're concerned about securing those names. There are countries overseas that have put the voter registration polls on the Internet because they want people to see, you know, "Look how many people we've registered to vote." But putting it on the Internet is different from keeping the official record off the Internet away from hackers.

Okay, I thank you for your attention. Perhaps some of this is some insight for you.

[Applause]

CHAIR BARTHOLOMEW:

We are running about five minutes early, but we will move ahead towards are our break now. I'd like to remind you that behind me, in seminal "B", there still are refreshments over there. And we'll see you back here at 10:45.

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[The meeting recessed at 10:20 a.m. and reconvened at 10:45 a.m.]

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CHAIR BARTHOLOMEW:

I'd like to remind everyone to please remember to state your name and your location for our transcriber.

We're going to be moving into our resolution time now. Peggy Nighswonger from Wyoming is going to be presenting on behalf of the Resolutions Committee as its Chair. Peggy?

MS. NIGHSWONGER:

I am needing some help up here. I think Matt -- where's Matt? Matt, what are you doing back there buddy? I think you're going to be at this computer up here making changes as we talk. I know you're having fun in the corner, and I don't know who sent you there, but you're coming out now. Isn't that the plan?

MR. MASTERSON:

Sure.

MS. NIGHSWONGER:

Oh, okay.

MR. MASTERSON:

I didn't know it.

MS. NIGHSWONGER:

I will just say, briefly, Larry Lomax was the Chairman of the Resolutions Committee, so I sort of got, you know, drafted military style here. And our Resolutions Committee did meet last night. While all of you were going to the bar and going outside in the sunshine, we were in this room meeting. But what we have today are a few resolutions that have been brought by the Executive Committee, as we met on Wednesday, and then there were some

resolutions that were brought by this group, that the Resolutions Committee considered last night. So we are going to have them up on the screen. And I think I was supposed to be getting some copies, but I think I can read from the screen.

I just want to make sure we have the right document. Does this look familiar to you, Ann? Is that the one?

MS. McGEEHAN:

Yes.

MS. NIGHSWONGER:

Okay, what I'd like to do for those of you who brought resolutions, if you could briefly just explain the resolution. I'll be happy to read them. Can you see the screen in the back? Really? Okay.

While he's getting this ready for you to be able to see it a little better, and I'll be happy to read the resolution also, Ann McGeehan from Texas, would you like to just briefly explain why you brought this resolution?

MS. McGEEHAN:

Sure. This resolution relates to the risk assessment that we heard about yesterday, we had the review of Phase 1. And in this resolution all the "whereases" basically state that the Standards Board finds this to be a very technical, difficult to read document and that we are basically resolving that the EAC work with the Standards Board moving forward on the development of Phase 2 and Phase 3, to ensure that it's a more readable document, and to make sure that it meets the original stated goal of the EAC, which was to help evaluate risks, so that they could then adopt the next

iteration of standards. Now, based on the discussion yesterday, it seems that the purview of the risk assessment is pretty broad and could be used in a lot of different ways, so it may be appropriate to narrow that focus for this specific activity.

MR. HANDY:

This is Nick Handy, Matt, are you running the computer up there?

MR. MASTERSON:

Yes.

MR. HANDY:

Okay, could you bring up the “Resolved” at the end, so we can see the final...

MR. MASTERSON:

You just want the “Resolved.”

MR. HANDY:

There we go.

MS. NIGHSWONGER:

Okay. I don’t know what the pleasure of the Board is, Madam Chair. Would you like me to read the whole resolution, the “Resolved” now that she’s explained it? Or would you like me to read the whole thing?

CHAIR BARTHOLOMEW:

Actually, if I could ask the membership, would you be most comfortable with the entire resolution read? Or would you be satisfied with the “Resolved” portion only?

MR. HANDY:

Just the “Resolved” would be fine.

CHAIR BARTHOLOMEW:

Is that a consensus among the members?

[The membership indicated in the affirmative.]

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MS. NIGHSWONGER:

Thank you, Madam Chair. And Nick, I know you're trying to get to the golf course but, hey, I'm with you. I'll read the "Resolved."

Okay, so, Texas thank you for your explanation there. And I will read the "Resolved" part and then we will entertain a motion for this resolution. "Resolved, that the EAC work with the Standards Board to develop a process to refine this risk analysis project so that it better meets the original goal of advising the EAC on the adoption of the next iteration of the Voting System Standards, and that the final deliverable be a document that is understandable to the Standards Board."

Okay, so I would entertain a motion for this resolution. Oh, sorry, you have to do that.

CHAIR BARTHOLOMEW:

And I will entertain a motion at this time.

MS. NIGHSWONGER:

Sorry, I'm taking over here.

CHAIR BARTHOLOMEW:

Would someone like to move that resolution?

MR. BARTLETT:

Gary Bartlett, North Carolina, so moved.

MR. ABRAMSON:

John Abramson, Second.

CHAIR BARTHOLOMEW:

Is there any discussion on the motion?

MR. HARRISON:

Madam Chair, Allen Harrison, Arlington County, I read the language here, I hear the language, but has anyone considered any impact on contractual obligations that might exist? I don't know how that might affect contractual obligations with the entity that is doing that. Was that a consideration in this motion?

MS. McGEEHAN:

Ann McGeehan, Texas, I think we do recognize that we may be -- that EAC may be, you know, locked in somewhat, but the thought was, with Phase 2 and Phase 3, that there may be some room to make this a more readable document.

MR. HARRISON:

But I don't know, you know, what the legal implications are, but I'm sure the people with the University of South Alabama would know whether this -- if they're concerned about that. I would hate to see us get locked into a legal contest with somebody that we've contracted with by putting something out that might change that.

CHAIR BARTHOLOMEW:

I believe, and Matt and the Commissioners can correct me if I'm wrong, but I believe that this is a recommendation from this Standards Board to the EAC. And if it's a doable resolution, then we are not locking them in, it's our recommendation to them.

COMMISSIONER BEACH:

That's exactly right.

MR. HARRISON:

Okay, but I...

CHAIR BARTHOLOMEW:

Is there any other questions? Any amendments? Are you ready for a vote? All in favor of the motion, as stated, please say aye. Opposed, say no. I believe the ayes have it. Is there any question to the outcome? Motion adopted.

[The motion carried by a majority vote of the membership.]

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CHAIR BARTHOLOMEW:

Do you want to move onto the second?

MS. NIGHSWONGER:

Okay, thank you Madam Chair. And the next resolution for our consideration was brought to us by John Lindback, Oregon. And so, I'll ask him if he would explain his resolution.

MR. LINDBACK:

Good morning, Madam Chair. It's John Lindback from Oregon. This resolution is geared towards building more regularity into the VVSG adoption process, suggesting that -- or at least hoping, that more regularity will mean more certainty for everybody involved, including the vendor community that is trying to develop new equipment, new solutions, make voting better. And as we've all been told in the past year or so, that the market has become dysfunctional and to the extent that the EAC certification process and the VVSG adoption process is contributing to that, the idea behind this resolution is to work our way out of that.

And so, what this resolution suggests is that after the approval of the next iteration of the VVSG, that we should adopt a

regular schedule of VVSG adoption, based on five-year intervals, and that it become a regular, steady adoption improvement of standards, and everybody has more certainty as to what's going to happen and when.

CHAIR BARTHOLOMEW:

Okay. Are there any questions regarding the proposed...

MR. WEIR:

Steve Weir, California. Can I see the "whereases"? This one, I think, merits some attention to the "whereases."

MS. NIGHSWONGER:

And I'm happy to read those if you cannot read them in the back. You want me to read them?

Okay, "Whereas, the Election Assistance Commission is an agency of the United States Federal Government created by the Help America Vote Act; and Whereas, The U.S. Election Assistance Commission is responsible for adoption of the Voluntary Voting System Guidelines and Certification of Voting Systems; and Whereas, The pace of certification of voting systems and adoption of VVSG has contributed to a slowdown in the ability of jurisdictions to purchase new systems or obtain upgrades of systems; and Whereas, A lack of certainty in both certification timelines and the pace of VVSG adoption creates disincentives for vendors to produce new, innovative systems; now, therefore, be it Resolved, That the EAC after approval of the next iteration of the VVSG should adopt a regular schedule of VVSG adoption based on five-year intervals."

CHAIR BARTHOLOMEW:

Yes, Gary.

MR. POSER:

Gary Poser, Minnesota. So, maybe John could just clarify for me, when we're talking the next iteration here, are we talking the big full-blown version? Or are we talking the 2005 revision? I'm not sure what they would consider to be the next iteration.

MR. LINDBACK:

Okay, the Resolutions Committee worked on this last night, and the consensus was, it's the big one, the 2007 version.

CHAIR BARTHOLOMEW:

Are you comfortable with the wording? Can I entertain a motion at this point in time? I'll entertain a motion for this particular resolution.

MR. MERRIMAN:

Madam Chair, this is Don Merriman from Kansas, I so move.

CHAIR BARTHOLOMEW:

Okay, do I have a second?

MR. WEIR:

Steve Weir, California.

CHAIR BARTHOLOMEW:

I have a motion and a second. I'll take discussion at this time. Any amendments?

MR. FELLOWS:

Madam Chair Dale Fellows, Ohio, I'm just a little concerned where it says, "based on five-year intervals" with no flexibility there. Should it be a maximum five-year intervals, is my question? And

I'm wondering if the proposer would want to adopt that as a friendly amendment.

MR. LINDBACK:

Madam Chair, this is John Lindback from Oregon, we did discuss that briefly last night. And if we were to insert something there, the recommendation would be a minimum five-year interval rather than a maximum.

CHAIR BARTHOLOMEW:

At this point in time, because we've already started discussion on it, I will take that as an amendment if someone is willing to move it forward as an amendment.

MS. FLYNN:

Julie Flynn from Maine, so moved.

MR. FELLOWS:

Dale Fellows, Ohio, second.

CHAIR BARTHOLOMEW:

Okay, we have an amendment on the floor to modify a minimum of. Is there any discussion on the amendment?

MS. McFARLANE:

Jonda McFarland, D.C. It seems to me that if you amend it and make any flexibility in that timeline, you've destroyed the whole impact of the resolution, which is to inject regularity into the process.

MR. FELLOWS:

Madam Chair, Dale Fellows, Ohio. I'm now confused as to the minimum versus maximum. My thought is not to go beyond five years, but that if there was ability to do a new VVSG, in three years,

or two years, that we should have that flexibility the way it reads now, without minimum or maximum. So I'm trying -- I'm discerning in my mind which is the proper word, that it's locked into five years, so you can't do anything in four years, and you can't do anything in three years, you have to do it on a five-year basis. And that's why I think maximum is the correct word, a maximum of five-year intervals, is what my intent is. Maybe I'm looking at it wrong, but...

MS. FLYNN:

Julie Flynn from Maine. I guess, in thinking about this, I'd like to withdraw my amendment if I may. And the reason for that is, because I think that to have it be a minimum or a concern, then you're really not going to have regularity. You're going to start pushing for that sooner and sooner, and the maximum doesn't give you -- if we do it every five years, you know, maybe minor changes needed, maybe, you know, give you plenty of time to do a full rewrite. I guess I'm more in agreement with the original motion.

CHAIR BARTHOLOMEW:

Okay. At this point in time, and this is where the parliamentarian hops out in me, because we've discussed this, it's not a motion that belongs to the entire body. So, withdrawing it is not proper. You can do a substitute amendment, and substitute the word out in its entirety or you can -- we can vote on it. But as it stands now, it is on the floor as an amendment.

MR. ABRAMSON:

Madam Chair John Abramson, Virgin Islands, I'd like to have a parliamentary inquiry from legal Counsel. I believe this matter is

spoken to in HAVA. I was hoping that she might be able to give us some direction.

COUNSEL NEDZAR:

That is correct. I'm looking for the section in HAVA. I believe it says the VVSG needs to be updated every four years -- reviewed every four years.

SECRETARY BRUNNER:

Madam Chair, Jennifer Brunner from Ohio, the only problem with putting any time guideline on it, other than what's in HAVA, is that you're not looking at the technology. We don't know what the technology is going to be. We don't know how fast it's going to progress. And you may need to revise your VVSG based upon the technology that's there. To apply guidelines that were based on prior technology for five years ago on something completely new, may be completely ineffective in doing what we're supposed to do, which is to ensure accuracy of the votes.

CHAIR BARTHOLOMEW:

My parliamentarian just informed me that while an inquiry is active we should be discontinuing discussion. He also informed me that we can, by unanimous consent of this body, withdraw that minimum, or we can proceed with a vote to leave it intact, or we can do a substitute. So, when we are finished with our inquiry, then we'll move back to this. So, one moment.

[Pause]

MR. ABRAMSON:

John Abramson, Virgin Islands, Madam Chair, can we have the exact nature of what the reading is, according to HAVA?

CHAIR BARTHOLOMEW:

Can you please repeat your request?

MR. ABRAMSON:

Specifically, what does the HAVA language read?

COUNSEL NEDZAR:

It reads, “The Commission shall review and update recommendations adopted with respect to Section 301 no less frequently than once every four years.”

As I read the two, the resolution couches it in language of adoption every five years. And 311(c) talks about review and recommendations. So I don’t believe these two are inconsistent. However, there may be a point at which the five and four-year periods overlap.

CHAIR BARTHOLOMEW:

With that, Julie did you want to continue with the withdrawal of your amendment? Did you want to do a substitute amendment? Or I’ll proceed on and we’ll take a vote on the amendment. I’d like to, if possible, keep the amendments to a minimum and deal with those so that we do not get a lot of amendments tacked on to a main motion. So, if we can deal with them, and then move on and take another amendment, and proceed to a finally amended main motion, if that’s okay. So, if we can deal with this amendment right now at hand.

MS. FLYNN:

Madam Chair, I’d move to remove “a minimum of” from the amendment, to remove that language.

CHAIR BARTHOLOMEW:

So a motion...

MS. FLYNN:

Substitute amendment, removing that language.

CHAIR BARTHOLOMEW:

So, you're making a motion to withdraw your amendment. We can take a consensus vote on this. Is it the consensus of the majority of the members here to withdraw that? Is that okay with you? Any opposed?

[The motion carried unanimously.]

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CHAIR BARTHOLOMEW:

Okay, that has been stricken. We're back to the main motion as it was initially made. Any discussion on the main motion or any amendments? I have one here that's been waiting.

MR. ENGLISH:

Dan English, Idaho. I was part of the discussion last night, and, at least, my understanding of what the group was getting at, was to try to have some defined predictability of how often there might be another generation of voting equipment, because of the, you know, from the vendors' point of view, but also from our point of view, and from our budgets' point of view. And pointing out that, in the future, as local election jurisdictions are going to have to buy these new equipment, usually, sometimes you may take four years worth of payments to pay them off. And that's why we did have a discussion of five-year minimum, and we also had the maximum. And I think the final language tended to be kind of a balance between the two, it didn't precisely identify that, but thought about a

five-year span of predictability was a good thing. And also at anytime, I mean, the Standards Board could make a new resolution, and the EAC could take a different action, so it's certainly not final binding. But that was some of the thought process, to just make some predictable blocks of time.

CHAIR BARTHOLOMEW:

Okay, John Lindback.

MR. LINDBACK:

John Lindback, Oregon. Madam Chair, yes, I appreciate the comments of both Dan English and the interpretation from the EAC attorney, because there is a difference between adoption and considering recommendations and reviewing them.

The intent behind this resolution is in regards to, sort of, a full-blown adoption of the VVSG. I don't think there's anything in this resolution that would discourage the EAC from dealing with an emergency or some new development of technology, that was significant enough that we had to make more immediate changes in the VVSG.

CHAIR BARTHOLOMEW:

Jim, please.

MR. SILRUM:

Jim Silrum, North Dakota. Madam Chair, may I ask a question, the answer to which may help to help us in understanding this resolution? The question would be, when voting system guidelines are established, that does not prevent a system from going beyond those guidelines, in terms of having greater

guidelines or adhering to a greater standard, those are simply minimum. Am I correct?

Matt, can you answer that?

MR. MASTERSON:

Mat Masterson from the EAC. We're certainly not going to not certify something, if it has better security than what's in the security sections of the VVSG. I don't know if this helps or not, but the next iteration, and actually, the 2005 VVSG, actually contemplate developments in technology in allowing -- there's an extensions clause in the 2005 VVSG and the next iteration, at least as proposed, has this concept of the innovation class which, you know, we'll see what comes out of that. But the VVSG contemplates developments in technology, at least somewhat.

MR. SILRUM:

Madam Chair, if I may continue then. Jim Silrum from North Dakota. If a system is required to have a certain level of security, and it puts forward a stronger level of security than what the guidelines recommend, that's doable. This resolution simply just says, we would have new iterations of the VVSG every five years. That's all it's really saying. But it does not prevent a vendor from exceeding the guidelines that are put forward in an existing set of guidelines.

CHAIR BARTHOLOMEW:

Are there any more comments? Any more amendments? Currently, we have the motion as it was originally stated and read. Hearing no further comments, all in favor of the motion say aye. Opposed? I believe that the ayes have it. Motion adopted.

[The motion carried by a majority vote of the membership.]

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CHAIR BARTHOLOMEW:

Moving on.

MS. NIGHSWONGER:

Thank you, Madam Chair, we will continue here. The next resolution for us to consider has to do with the Election Assistance Commission commissioning a study on the risks of various types of voting systems.

And so, I'll call upon John Lindback, again, Oregon, if he would like to explain this resolution. Would you like me to read it or you want to explain it first?

MR. LINDBACK:

I'll go ahead and explain it.

MS. NIGHSWONGER:

Okay.

MR. LINDBACK:

It's pretty short. You can probably fit the whole thing up there. I thought the presentation yesterday from the folks doing this study was very complete. It was eye opening to learn about the ambitious project that they have undertaken. I am concerned, however, about the publication of information in a public study that could provide a blueprint for people to disrupt our elections. That's sort of the quandary you get into with these kinds of studies, is that we want to know what the threats are to our elections, but we also don't think it's in the best interest for this to be a public document, at least the threat part of it. So, this resolution tries to get at that

issue, and it just simply says that the EAC should keep confidential any threat information or assessments that could be used to disrupt an American election.

MS. NIGHSWONGER:

Thank you, John.

CHAIR BARTHOLOMEW:

If I could ask Peggy to read that into the record.

MS. NIGHSWONGER:

Okay. Do you want me to just read the “Resolved” or the whole...

CHAIR BARTHOLOMEW:

Just the “Resolved.”

MS. NIGHSWONGER:

Okay. “Resolved, That the EAC should keep confidential any threat information or assessments that could be used to disrupt an American election.”

CHAIR BARTHOLOMEW:

Any discussion? Or I’ll entertain a motion at this time on that.

SECRETARY CHAPMAN:

So moved. Beth Chapman, Alabama.

CHAIR BARTHOLOMEW:

Second?

MR. HURST:

Tim Hurst, Idaho.

CHAIR BARTHOLOMEW:

Any discussion? Yes.

MR. MERRIMAN:

Don Merriman, Kansas. Maybe this is a question for the attorney. Is this going to be a problem with the Sunshine information that the EAC has?

COUNSEL NEDZAR:

Yes, thank you, I was just going to address that. The EAC does not have authority to withhold publication or information that we receive from taxpayer funded studies. If we were to decide not to publish this study, it would still be available to the public through a FOIA request.

MS. McGEEHAN:

Ann McGeehan, Texas. Are you sure there's no exceptions in the Federal law for security issues? I know in a lot of Sunshine laws there are exemptions for security.

COUNSEL NEDZAR:

There are exemptions within FOIA for national security threats. However, we would have to work with other federal agencies to determine whether this document contains such information, and that is a determination that we would not make on our own.

MS. JOHNSON:

Sarah Johnson, Kentucky. So, what you're saying then, is, that it is an issue that you have to work with other entities in the Federal Government, which means, you can potentially, if other entities agree with you, keep this public? Because previously you said it was subject to FOIA, it had to be released. Your answer to Ann's other question changes that, in that there is a possibility if

you work with other agencies, it might not be released. Do I understand that correctly?

COUNSEL NEDZAR:

Correct, there are exemptions that we could make use of.

MS. JOHNSON:

Okay.

COUNSEL NEDZAR:

But we would have to coordinate with other agencies to determine that.

MS. JOHNSON:

Okay, well, that's different than it cannot be released.

COUNSEL NEDZAR:

I apologize.

CHAIR BARTHOLOMEW:

Is there any other discussion?

MR. HARRISON:

Madam Chair, Allen Harrison, Arlington County, Virginia. The language "keep confidential any threat information," would there ever be the case where there would be information that needs to be transmitted to us to be on our guard? Would that hinder that possibility, to let us know of a threat, locally, or statewide, that, "Look out, we have information that they're going to do so and so to your system and you need to take some counter measure"? How far does the confidentiality go when it might be needed information?

CHAIR BARTHOLOMEW:

On that one I would have to defer to the EAC. I don't believe that those two are tied, however. I think that that's a different question for another time.

So, we'll move to the back of the room. I saw a hand. Yes, sir, on my right.

MR. DEZMELYK:

Thank you, Madam Chair. Robert Dezmelyk, New Hampshire. My question would be whether this would apply to test results, which might indicate that a fielded system had a security failure. So, during a certification process there might be information of this sort.

CHAIR BARTHOLOMEW:

Would the maker of the motion clarify that or the presenter?

MR. LINDBACK:

I'm assuming you're talking about certification test results?

MR. DEZMELYK:

That's correct.

MR. LINDBACK:

Well, that wasn't part of this motion. This motion was aimed at a study that's, obviously, more all encompassing, where they are looking at every procedure used in an election, including things like how ballots get transported from one location to another, et cetera. And it doesn't get that specific, or it doesn't make a recommendation on other items of business at the EAC. It's focused on this particular study.

CHAIR BARTHOLOMEW:

I have another question here.

MR. ROBINSON:

Thank you, Madam Chair. Nat Robinson, Wisconsin. My question is to your staff Counsel, and the question is, regarding the debate that we were in, about withholding. If a member of Congress were to ask for the report, even though it had been deemed in consultation with other Federal agencies that it could be withheld, would that request from a Congress person be fulfilled?

COUNSEL NEDZAR:

That's a good point. Requests from Congress will be fulfilled. And once a report is distributed to any party outside the EAC, we have no control over their further distribution.

MR. ROBINSON:

Thank you.

SECRETARY BRUNNER:

Jennifer Brunner from Ohio. When we conducted a study of this nature, one issue that came into play was Trade Secrets from the manufacturers. We were required to negotiate very detailed confidentiality agreements with the voting machine manufacturers, and in turn negotiate confidentiality agreements with the researchers and to these who were performing the study, and ensure that those two confidentiality agreements were consistent, which resulted in us issuing two actual reports; one that was redacted for Trade Secrets, according to the confidentiality agreements, and another that was released to the public.

Overall, I think this resolution doesn't set a good tone for this Board, because it would tend to make the system less transparent. When you take this to the further issue of open source code, open

source code would allow anyone to look at the mechanism of how the source code was constructed and make improvements, and it seems to be working in places where it's used. I think this takes us a step backwards and puts us in a light where we're looked at, as election officials, as obstructionists.

MR. PALMER:

Don Palmer, Florida. I believe that, going back to the presentation that was offered by the University of South Alabama, they are gleaning a lot of information from a lot of different sources, and already studies on risk assessments of different voting systems. This is a study for the EAC. It's, sort of, for them, gathering information from all types of sources from the public that are already public knowledge. And although there may be some concerns, I think that it does set a wrong tone, and I just feel uncomfortable not having a study out there that's confidential. I think that this should be open and that there should be discussion about the risk assessments of different voting systems. It is already out there, and I think this would be more of a definitive study on all the voting systems, not just picking and choosing which system to look at or which software or hardware. This is encompassing the entire realm of voting systems, and I think it's very valuable, and I'm just a little bit uncomfortable making this confidential.

MR. FINLEY:

Lowell Finley from California. I just want to confirm one factual assumption, and that is that it's my understanding that Professor Yasinsac and his team do not have access to confidential proprietary information of the voting system vendors, as part of this

study; they're working with publicly available material. Is there anyone here from the team that can confirm that? Yes?

CHAIR BARTHOLOMEW:

Ma'am, can I have you come to a mic please?

MS. BENHAM:

Lisa Ann Benham from the voting system risk assessment project. That is accurate, we do not have access to any confidential source code.

MR. FINLEY:

Well, with that confirmed, I agree with the comments that have been made by those who have preceded me, that we're essentially talking about information here that is already available to anyone who wants to find it. And if the concern is with election procedures that are followed by particular jurisdictions, in terms of transportation methods or other particular actions that are taken to defend chain of custody, those things are also pieces of information that are readily available. And my final point is that I think there's an assumption here that you can obtain, or you can maintain security through obscurity. And this is something that's been discussed in the past with respect to computer code or the design or computer systems, but I also think it's true about election procedures. There are people who have access to information about how all parts of our election systems are done, who are in positions to exploit that information, and I think it's more important for us to know what those threats are, and be in a position to take actions to defend against them, than to try to keep that hidden from the public. So, I would urge a vote against this resolution.

CHAIR BARTHOLOMEW:

John Lindback.

MR. LINDBACK:

Madam Chair, I think this has been a really very enlightening discussion, and the debate has, I think, been very healthy for this group. I don't think that we should make assumptions from one state to another, though, about what information is public. I know in my state, that security information with regards to elections can be held confidential by law. My Legislature has recognized that there is a security threat to elections and that there is information that would not be wise to sort of lay it out there in public and provide a Bible on how to disrupt an election. I think our state made the right decision.

CHAIR BARTHOLOMEW:

Is there any more discussion?

MR. QUINTANA:

Jorge Quintana, Montana. Not only do I have concerns with transparency, here, but accountability. If these threats are known, we should all know about them. I think if we keep these kinds of threats confidential, it provides those in authority a fig leaf to say, "We didn't know about it." I think for transparency in government, for accountability of our officials, and for confidence in our election process, I would urge people to vote "no" on this.

CHAIR BARTHOLOMEW:

Any more comments? Seeing no comments, all in favor of the motion as originally read please say aye. Opposed say no.

[The motion failed due to a lack of majority vote by the membership.]

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MS. NIGHSWONGER:

Okay. The next resolution for our consideration has to do with the Election Day survey. And it's a rather long one, but I am happy to read the resolution. Basically, what has happened is, as you know, the Election Day survey comes about every election year, and many times the states do not get the information about what is going to be required on the Election Day survey until very close to the elections. I think this year, some of you said you got it after the election.

Anyway, many of you know that the states must be prepared to generate reports and all of that kind of thing, out of their voter registration management systems in order to get the information that is required by the EAC. So, this resolution basically asks that, now that we've completed the 2008 Election Day survey, we would like to ask the EAC to hold off on making any changes to this survey. So for the 2010 election, the Election Day survey would basically look the same as it did for 2008. There could be things that could be taken out of the survey that are not pertinent to, you know, improving elections or that kind of thing. But we would ask them not to change the survey and make any additions to the survey for the 2010 election, and to begin working on the survey now for the 2012 election.

So, I'm happy to read the whole resolution, or would you like me to just read the "Resolved"? Madam Chair.

CHAIR BARTHOLOMEW:

Yes, would it be the consensus of the group to read the entire resolution or just the “Resolved”?

[A majority of the members indicated “Resolved.”]

MS. NIGHSWONGER:

Everybody wants to play golf. Okay, I’m happy to do that. “Resolved, that the EAC use the 2008 Election Day survey questions as the 2010 Election Day survey, the EAC entertain no additional questions, and that the EAC conduct a review of the existing survey questions with all users with the objective of improving existing questions and eliminating those questions of little elections value, and that a wider review be conducted in advance of the 2012 election; and, be it further resolved that the EAC complete all work on the 2010 Election Day survey no later than August of 2009; and, be it finally resolved that the EAC establish a formal process for making decisions on what data to collect and election officials should be a part of that formal process.”

CHAIR BARTHOLOMEW:

Do I have someone that is willing to make that resolution?

MR. SHOLL:

Howard Sholl, Delaware. I move the resolution.

CHAIR BARTHOLOMEW:

Do I have a second?

MR. COLON:

Second. Nestor Colon, Puerto Rico.

CHAIR BARTHOLOMEW:

Any discussion? Yes, Lowell.

MR. FINLEY:

Lowell Finley, California. The first “Resolved” paragraph seeks to lock in as the next survey the exact questions in the present one, but later down there’s another paragraph, that you might scroll down to that talks about completing all work on the survey, the 2010 survey, no later than August of '09. And I’m not clear on what other work there would be besides the scope of the questions.

MS. NIGHSWONGER:

Madam Chair? Lowell I believe, if I understand your question right, the consensus of the group, I believe, was that the Election Day survey remain the same for 2010 unless -- we don’t want anything added to it. We don’t want anything added to it. If there is information that can be taken out, because it really does not have any value, okay, to the election survey, then that could be taken out. But we don’t want anything new added to the survey. I don’t know if that answers your question.

COUNSEL NEDZAR:

Madam Chair, if I may. There are questions that we are statutorily required to ask, and we may get additional requirements added to a bill in the future. So, I would request that this resolution be amended to reflect the fact that we may not have control over some of the questions that are in the survey.

CHAIR BARTHOLOMEW:

Is there anyone that’s willing to make that amendment as requested?

SECRETARY BRUNNER:

Jennifer Brunner, Ohio. Could you scroll down to see the last two paragraphs again? This may not exactly be the amendment that Tamar is looking for, but I would offer the friendly amendment that the first two "Resolved" paragraphs be deleted and that the only "Resolved" paragraph that remains would be the last paragraph. I think that way, we are in a position where our hands are not tied and neither are the EACs.

CHAIR BARTHOLOMEW:

Are you making that in the form of an amendment?

SECRETARY BRUNNER:

That is a motion to amend the motion.

CHAIR BARTHOLOMEW:

Okay. So, the motion is to strike the first two "Resolved" and the "be it further resolved" paragraphs. Do I have a second? That's an amendment. Do I have a second on the amendment?

MR. FELLOWS:

Dale Fellows, Ohio. Second.

CHAIR BARTHOLOMEW:

Is there discussion on the amendment?

MS. NIGHSWONGER:

Madam Chair?

CHAIR BARTHOLOMEW:

Yes.

MS. NIGHSWONGER:

The only thing I can say about this is, I believe the EAC already uses a formal process, and I believe they already have used election officials and worked with election officials to try to

help figure out what they should collect. The problem, and the reason this resolution was brought forward, is that they are not doing it in a timely fashion and, you know, in getting us the information about what needs to be collected on the Election Day survey, you know, three or four months or even six months prior to the election is not adequate time. So, I think the last paragraph, with all due respect to you, Madam Secretary, I think it's already being done. I think this resolution was to make them, you know, realize that we need more time, so don't be changing the Election Day survey for the 2010 election. We need time to change our voter registration management systems, and I think that's why the other two paragraphs were ahead of that.

CHAIR BARTHOLOMEW:

I have Bill Campbell here, first.

MR. CAMPBELL:

I have a question to legal Counsel. It's my understanding that this type of resolution is merely an expression of the will or the interest of the Board. And is it binding, in any way, if we were to add these date and time structures?

COUNSEL NEDZAR:

It is not binding.

CHAIR BARTHOLOMEW:

Julie.

MS. FLYNN:

Julie Flynn from Maine. Given that the Election Day survey, at least, to the voter

registration statistics, are supposed to cover the period from the last election to the end date of the next election, that two-year reporting period, in some cases, if we don't know an add code to our systems now, we don't have that data for a lot of the period. So, you know, we could write queries, but if we weren't collecting certain information, we don't have two full years of information to report. So, it's not a very good reporting tool, in that respect, if you don't lock it down ahead of time. And I think this was discussed at our NASED meeting, and all of the state election directors that pretty much are trying to either get this information from the locals, or in our case, trying to use what we have in our automated central voter registration system for a lot of this data, you now, if we don't have that lead time, we don't have a very good reporting tool, or a very good result, because the data is not complete.

CHAIR BARTHOLOMEW:

Okay, I want to take a moment just for a quick reminder. The reason the mics are not working is that we are exceeding our four mic limit. So if you can remember to turn your mic off when you're done speaking, that will keep us up and running.

Any more discussion on the amendment? Yes, Lowell.

MR. FINLEY:

Lowell Finley, California. Debra Bowen, the Secretary of State of California, has communicated with the Commission a request that questions that had, in the past, been included in the Election Day survey concerning voting system incidents be reinstated to the survey, and that the responses that are returned be tabulated and provided as part of the report, which the last time

the questions were included the results were not fully reported as part of the report of the survey. And so, from California's point of view, we do have a problem with the structure of the resolution being one in which nothing can be added to the survey.

I would point out that this is not a new type of information or something that would need to be programmed in advance into data collection systems, because we're talking here about incidents that would occur during early voting, or Election Day, or post-election tabulation processes. So, I think there are other jurisdictions that have an interest in that data being part of the Election Day survey that's very useful. And without amendment, for that reason we can't support this resolution.

CHAIR BARTHOLOMEW:

Any more discussion on the amendment to strike the "Resolved" and the "be it further"? Yes.

SECRETARY BRUNNER:

Jennifer Brunner, Ohio. Madam Chair, the one thing that elections have evolved into, is using more data to actually develop best practices, especially now when we're using types of systems that are more sophisticated, more computer based. The way that it was originally written appears, and maybe not with that intention, to want to limit the dissemination of information about elections. And I don't think that's where we want to end up, and I'm not sure that that was the intent of those who drafted this. I just think the way that it's originally stated leaves us in a position where we look again as if we're trying to hinder the flow of information about the election process. A suggestion would be to adopt it without those two

paragraphs, and then to add a paragraph that maybe more narrowly states what we're trying to do.

CHAIR BARTHOLOMEW:

Any more discussion on the amendment?

MS. JOHNSON:

Sarah Johnson, Kentucky. I mean, with all due respect to the transparency issue, I don't think anyone is arguing the transparency issue, and that we're trying to withhold data. I think the point of it is, as Julie Flynn said, you can't get good data that answers your original question, unless you tell us, as election officials, early enough in advance, what data you want to collect. So, if you don't tell us early enough, you don't get good data. You get data, it's not good data, and you can manipulate it, you know, however you want. But I don't think this has anything to do with transparency, in my opinion. This is just getting us the information that we need, to then disseminate to our county officials, program our databases, et cetera, to get the data that you want. So, I don't think transparency has anything to do with this.

CHAIR BARTHOLOMEW:

Secretary?

SECRETARY CHAPMAN:

Beth Chapman, Alabama. I would agree with Sarah's comments, it's not to eliminate the dissemination of information, but some of you may deem these reports simply reports. The State of Alabama right now is being sued by the Department of Justice for this information that was not provided two years prior to my even being in office. And not only that, they have sued me under the

pretense I would not provide the information. And so, this needs to be taken much more seriously I think. And I'm not the only state, Vermont was another state, and I forgot the other. Yet, at a recent Secretary of States meeting when I said, "By a show of hands how many people have not turned in this information," it was an overwhelming number of people. But my state is being sued for information not turned in two years prior, and under the assumption I would not turn it in. And I am proud to say, I was one of the top two Secretaries to turn my information in first.

So, you know, this is an EAC report, but those who want to go deeper with this do. And it's a grave injustice to those of us who've worked very hard, particularly on UOCAVA numbers and research and information, to be treated in this way.

CHAIR BARTHOLOMEW:

Any other discussion on the amendment?

MR. FELLOWS:

Dale Fellows, Ohio. It seems to me that the issue of the folks who are advocating this is the time, timing as to when to ask. Yet the part that bothers me and many others, I think, is the part where it talks about, there shall be no additional questions from the 2008 election survey. I mean, that doesn't seem to be really relevant or an issue. I mean, you're lacking in something that has already been done, yet not allowing for additionals. It seems like the only issue that folks are advocating is the timeframe. And so, if there's an identification of what's a reasonable timeframe, then maybe this resolution works. If not, I don't think it works.

CHAIR BARTHOLOMEW:

Over here.

MR. PALMER:

Don Palmer, Florida. Most of the survey is statutorily required, either by rule or by the actual NVRA or UOCAVA. With that being said, it's very difficult to comply with this requirement, and so, I think that it is a concern. I mean, I do think it's a legitimate thing to have in a resolution that the EAC will entertain no additional resolutions. We are aware that the EAC could, perhaps, not take our advice, but it is already a very lengthy and difficult survey to comply with, and I think it's a legitimate issue to offer to the EAC that it should not be expanded. So I would just offer -- and I know the amendment is already on the floor -- that perhaps a different friendly amendment could simply add some language after, the EAC shall entertain no additional questions beyond that statutorily required, and that will limit it to, that is what's statutorily required.

CHAIR BARTHOLOMEW:

Can I ask you to hold that amendment until we've finished this one...

MR. FELLOWS:

Yes, ma'am.

CHAIR BARTHOLOMEW:

...and then we'll go to that next?

MR. FELLOWS:

Yes, ma'am.

CHAIR BARTHOLOMEW:

I had another question on this side. Yes, sir?

MR. BARTLETT:

Gary Bartlett. I agree with Ohio. I think that we should concentrate on the time, and not necessarily try to restrict the EAC, especially when they may have to answer questions that they have no control over.

CHAIR BARTHOLOMEW:

Is there any other discussion on the amendment?

MS. McRILL:

Sue McRill, Michigan.I'm concerned with the August '09 date. I still don't see how locking in the criteria for the 2010 report in August of '09 is going to provide enough lead time to prepare for the 2010 survey.

CHAIR BARTHOLOMEW:

Are there any more comments on the amendment?

MR. SILRUM:

Madam Chair, Jim Silrum, North Dakota. It seems, if I may get on the record, that the intent of this whole resolution is that it takes two years to gather the information that's necessary for the reports, and it takes time before that to establish what you're going to collect, if that information wasn't collected previously. So, therefore, the intent of this motion is to establish a two-year lead time, so that programming could be changed, preparations can be made. And that is the intent. It's not anything other than that, other than saying, "We need the time to collect the data."

CHAIR BARTHOLOMEW:

Okay, I'd like to say that we are running very tight on time. I'd like to move this amendment forward, as quickly as we can, and

then we will have to postpone for lunch. So, at this point in time, is there anything new that has not been discussed, in regards to this amendment? Anything new?

Okay, I'm going to call the vote on the amendment, and that would be to strike the "Resolved" and the second. And so, that will leave the last intact. Okay? All in favor say aye. All opposed say no.

[The motion failed for lack of a majority vote.]

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CHAIR BARTHOLOMEW:

We're on the main motion. Any comments on the main motion or amendments on the main motion? Yes.

MR. PALMER:

Don Palmer, Florida. I would suggest a friendly amendment that after the words, "The EAC entertain no additional questions," we insert "beyond those statutorily required."

CHAIR BARTHOLOMEW:

Okay. I'm going to take that, if it's all right with the maker, as an amendment. I need a second on that amendment.

MS. JOHNSON:

Sarah Johnson, Kentucky.

CHAIR BARTHOLOMEW:

Okay, I have a motion and a second on the amendment to adjust it as written on the screen. Any discussion on the amendment? Seeing none, all in favor of the amendment please say aye. Opposed say no.

[The motion carried by a majority vote of the membership.]

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CHAIR BARTHOLOMEW:

Motion carries. The amendment is carried. We're back to the main motion as amended. Any discussion on the amended main motion? Seeing none, I'm going to call the vote on the amended main motion. All in favor say aye. Opposed say no.

[The motion carried by a majority vote of the membership.]

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CHAIR BARTHOLOMEW:

I'm going to put you on just a temporary hold to find out about lunch. One moment.

[Pause]

CHAIR BARTHOLOMEW:

We are in a time constraint right now, so at this point in time we will stop this portion. I would like a motion to table this until later in the day, at which time it can be taken off of the table. Can I have someone table the remainder of this item?

SECRETARY CHAPMAN:

Beth Chapman, Alabama. So moved.

CHAIR BARTHOLOMEW:

Could I have a second?

MR. ABRAMSON:

John Abramson, Virgin Islands. Second.

CHAIR BARTHOLOMEW:

Can I have a vote on the motion to table the remainder of this item until we can take if off of the table this afternoon? All in favor say aye. Opposed say no.

[The motion carried unanimously.]

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CHAIR BARTHOLOMEW

Okay, we are next door for lunch.

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[Luncheon recess from 11:55 a.m. until 12:38 p.m.]

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COMMISSIONER BEACH:

Now it's my distinct honor and privilege here to introduce to you Secretary Kurt Browning of Florida. He's been in the elections industry for about 28 years. He served as the election director for Pasco County, Florida, and actually that's where I met him back in 2006 when we were observing the recount in Sarasota in Florida 13. And how he was appointed in 2007 as Secretary of State. And he will be discussing with you the conversion from Florida's DREs to optical scan and some other Florida certification issues and programs that they do here.

So without further adieu, Secretary Browning.

[Applause]

SECRETARY BROWNING:

Thank you and welcome to Florida. Welcome to sunny, warm Florida. Who comes from states that have still snow on the ground? Gosh, isn't it great? Jim, I know you're glad to get out of one of those Dakotas up there. It's a beautiful place.

Native Floridian, and I still find my state incredibly amazing. I was born and raised in Dade City, which is a small little rural community due west from here in Pasco County, on the Gulf of

Mexico. Never thought that I would be standing here before you, or for that matter any other group as the Secretary, Florida's 29th Secretary of State. And I am loving every minute of it. The Secretary of State in Florida is responsible for business formations, as most Secretaries are. We have the cultural affairs. I'm the State's chief cultural officer, historic preservation, libraries, Administrative Code, of course elections. I am glad my director is here, and I hope you get to know him very, very well, Don Palmer. We are glad that he is part of us. I was telling the Chair at lunch that it's kind of nice to have Donald there from the DOJ federal level experience. We were kind of lacking in that area. We kind of had the state piece down, but it was the federal piece that we were really missing. So, Donald, I'm glad that you're part of this.

I want to thank the EAC, and I want to thank the staff for allowing me to come back down and address you folks today. Where is Emily? Emily, thank you so much. She is a real jewel. She has just taken care of everything that I need, almost everything that I need. I would be remiss in telling you that while you're in Florida you need to spend lots of money. Please, please, please if you must go to outlet malls, go to outlet malls. But go visit our parks; Animal Kingdom and Epcot and Magic Kingdom and Universal and all those other places. We need the revenue. We are trying to plug about a five to $6 billion hole starting Tuesday when our Legislature goes into session.

So with that, I am honored to be here to share Florida's experience with you today with our conversion from touchscreen to optical scan voting systems. In my 33 years of elections

experience as an administrator, I've gone through three voting systems conversions. Before I was a supervisor in Pasco, I worked for the supervisor for five years and during that period of time we moved from lever machines to punch card. We had punch cards, I got elected in the interim in 1980 as the supervisor, and then we had made the conversion from punch card to touchscreens in 2001 after that election. As the Secretary of State -- I figured some of you would get that -- my department coordinated the conversion from touchscreen to optical scan for this past year during 2008. Florida became an all optical scan state on July 1, 2008. 15 counties, many of our largest counties representing over half the 11.2 million registered voters in our state, made the transition from touchscreen to optical scan voting systems. And I will tell you that although any type of system change can be challenging, doing so on a Presidential election year was even more so. That being said, we've conducted two successful statewide elections on our new system, which was our primary in August and then our general election in November.

In recent years, the nature of election administration I believe has become very reactive. It's been my goal this past election cycle to be deliberative and proactive in our preparations. I remember when I got the call, and I had just gotten through the '06 elections, recovering from back surgery, and I get this phone call from the new Governor's transition team. Now keep in mind I've had back surgery, I'm on pain medication, I'm feeling rather "well," and the phone rings and it's the transition team saying, "We'd like to talk to you about serving as Florida's Secretary of State." And I

thought it was a joke, I really did. I laughed at the woman on the telephone, only knowing that about 10 days later I was being rolled out as Florida's 29th Secretary. I told the Governor elect at that time that if appointed one of my desires would be to bring some calm or some structure to this process that we call "Florida elections."

The efforts of the Florida Department of State and the 67 supervisors of elections paid off in '08. We planned and prepared for everything that we possibly could imagine. We checked and rechecked those plans, and most importantly we never assumed anything. Nothing. Even for supervisors that had been doing it as long, or almost as long as I had, we just checked and checked and rechecked and made sure that everything was right.

In February of '07 Florida, Governor Charlie Crist announced the voting systems conversion plan. And then throughout that 2007 Legislative session I made it a point to include, obviously, our elections officials by briefing them on the progress of that plan as it moved through the Legislative process. When the Governor signed the legislation that May, the Department of State set a timeline and benchmarks that we needed to meet in order for that conversion to be successful. We met or exceeded every benchmark that we had set. The most important benchmark was certifying new systems. I believe Florida has one of the toughest certification programs in the nation, and over the last two years we've expanded that program to include the in-house source code review.

Florida does not require federal certification of voting systems, so our Bureau of Voting System Certification under the

direction of David Drury, who I'm sure many of you know, was the first to test and certify the latest optical scan technology during this past election cycle, which included the ES&S DS-200, the Premier OSX and the Sequoia Insight Plus. The Bureau worked tirelessly to test all the equipment and the enhancements so they could be certified in an effort to timely deploy these in our state. In the year preceding the transition, the Bureau tested and certified 15 different configurations or upgrades to voting systems, including ballot-on-demand. I will tell you ballot-on-demand we had to have some provision for ballot-on-demand for ballot management with our early voting sites. We had, for example, Miami-Dade County, the largest county in Florida, one million registered voters, and we had just taken their touchscreens away from them. And they have 20 early voting sites and three languages, and it was going to be problematic for them to manage ballots. So the state provided the funding for the ballot-on-demand, which worked so well in that environment that we -- I actually had forgotten that we had deployed ballot-on-demand for that election. We did not hear of too many issues once we got up and running with early voting primarily; that really tried and tested that system.

In addition, the Bureau conducted functional testing and source code review for the Okaloosa distance balloting project. This project established a secure distance balloting environment for approximately 100 overseas voters. Some of you know Pat Holleran, the former Supervisor of Elections in Okaloosa County, and this was her project that she wanted coming from the panhandle Okaloosa County/Eglin Air Force Base area to better

serve the voters of Okaloosa County. And that balloting project went through the same rigors of system certification as any other system would have. It met the criteria that was necessary in order to be used as a voting system, and they deployed that system for the general election 2008. The Bureau granted provisional certification status to that project for 2008 only.

My staff and I also made site visits to the conversion counties in the spring of 2008 to assess the progress of the conversion. The visit really was a two-pronged approach. First, we discussed training of staff, poll workers, voters and the counties' voter education plans with supervisors. Training, training, training, I cannot over-emphasize enough the importance of training, and not just for poll workers but with your staff, as well as voters when you're making the transition. The second prong was where we discussed technical issues relative to the deployment of the new systems with the county technical staff. We wanted to make sure that they were on target with the benchmarks that we had set, making sure their plans were in place in order to have a smooth transition for the August primary. In addition, we conducted follow-up conference calls to track the counties' progress.

As we implemented the systems across the state, it was important to meet, and we continued to monitor not just those 15 counties that were making the change but all 67 counties to ensure their readiness. My staff and I held monthly conference calls with supervisors of elections to track the preparations for our primary and for our general election. In our outreach efforts, the Bureau of Voting System Certification staff visited more counties than ever

before to monitor pre-election preparations, early voting, Election Day, recounts and post-election audits as they were needed. Their objective was to observe and examine the registration and elections process and the condition, custody and operation of voting systems and the equipment in the field. It's one thing to see it in an environment where you're testing it; it's a totally different horse when you have it out in the field with poll workers, election staff and voters using those systems.

Prior to each of the statewide elections, we met with voting systems vendors to discuss technical support for counties and where the vendor staff would be deployed on Election Day, as well as Election Night. We required them to be in Florida scattered throughout the state, all three manufacturers that are certified for use in Florida. We also wanted their cell phone numbers. We did not want their corporate headquarters' numbers where we could not find them. So we got all that information and that was deployed to my staff. This information is a critical component of our deployment schedule and response plan.

During the past two years, the Bureau has traveled and maintained a presence in 34 counties during logic and accuracy tests, 32 counties during early voting, eight counties on Election Day. In addition to the voting systems personnel in the field, we actually assigned staff from the Division of Elections in Tallahassee and the Office of the Secretary in Tallahassee to contact supervisors of elections during early voting and including Election Day. These staff members had contacted their assigned counties to assess how the voting process was going. Any issues that were

reported by the counties whether they were voter registration issues, voting systems issues, legal issues, it didn't really make any difference what kind of issues they were, I wanted to know about them. And they were tracked and assigned to key personnel for resolution. This process was incredibly helpful in quickly assessing whether the issue was just isolated to a particular county or if it was, worst dream/nightmare, would be that it was something on a statewide basis. Thanks to the hard work of the supervisors of elections and their staffs here in Florida, we had very successful elections and a very successful systems conversion on a Presidential election year.

But I will tell you our work is not over. Immediately following the 2008 general election, I instructed my staff to begin preparations, obviously, for 2010. We formed working groups dealing with various aspects of elections administration issues in the Department. These groups will analyze the elections process and set timelines for recommended improvements to our process. We've done some of that already with some legislative issues that will be going before our Legislature beginning Tuesday.

The Florida Election Code mandates a number of reports that counties must file with the state at the conclusion of the election cycle, and these reports have been really invaluable tools for the Bureau of Voting System Certification to track voting systems performance. The Bureau is responsible for acquiring, analyzing and categorizing the various problems that occurred during any election. Typically, these issues can be classified in four different groups. Those groups are man, machine, materials and

methods. Analysis of apparent systemic problems may reveal root cause or causes and offer the potential for developing mitigating strategies that can be applied statewide to address those issues.

Through our tracking efforts in 2008, we have suggestions for enhancement and improvements to both the new and the older voting systems for the 2010 cycle. Voting systems are a costly, evolving product and it's the responsibility of state officials through testing and certification, observation in the field and analysis of reported data to ensure that those products not only function as advertised but they continue to do so.

Now please forgive me when I use this analogy, but I use this analogy of an airplane describing voting systems, and some of you may have heard this on my last trip when I was down in Miami speaking to this group, but many of you -- how many of you flew down on an airplane to come to Florida? Almost everybody in the room. And I'm confident that when you boarded that plane you had to have had a relatively high level of confidence that when you boarded the plane, took your seat, strapped yourself in and they closed the cabin door, when they started the plane, they backed it out, taxied out, and when that thing started running down that runway you had a high level of confidence that that plane was going to take off, gain altitude, stay there and come down at the appropriate time to a safe landing. Did anybody not expect that when you got on the plane? I didn't think so. My opinion is that the same cannot be said about voting systems. Voting system vendors must be held accountable for the equipment that they produce, but it's been my policy to treat vendors as partners and not

adversaries. We've had great success working with our vendors, working together to improve voting systems that are certified in Florida. My opinion is there's enough angst out there already with the threats of decertifying voting systems causing even more chaos in our industry.

One of our first priorities as we began planning for the 2010 election cycle was to hold a joint meeting with our voting systems vendors. They were scared to death. I did that in January of this year and I called them altogether, phones started lighting up, "What are we talking about? Are we going to talk about proprietary secrets? What's going to happen"? Because they've never been in a room, same room around the same table talking about issues with their systems. And we conducted the meeting in such a manner that we did not have to talk about proprietary issues but general elections issues and reliability of equipment, challenges that we faced during the 2008 election cycle, as well as issues that I wanted resolved with a high level of assurance before we got into the 2010 cycle. I felt it was important for everyone to be at the same table to hear the same message and to work together to improve elections in Florida. We discussed the issues encountered during the 2008 elections. Quite candidly we described and discussed those issues, and we set a game plan for resolving any issues that may be outstanding as we prepared for the 2010 elections. And in this business you're just not quite sure what you're going to find from one day to the other, but I'm trying to get my arms around the fact of why it is that way. And what we're trying to do in Florida is minimize the uncertainty about elections

administration, both from the administrative side but also the technical side.

At that meeting, I shared with the vendors my frustration with the lack of quality control in the manufacturing process. Despite our rigorous testing, we have noticed that what we were testing is generally not the same quality equipment that arrives in the field. Not only must we ensure that systems are secure and reliable and accurate, but also that they work as promised. But how do we accomplish this? Well, I believe we must be deliberative and proactive in our actions. We need to look to the future of the industry with some degree of common sense. We need to plan and prepare for the development of new technology. We must strike a balance between academics, activists and elections administrators. And I believe a balance can be struck. Elections, and more specifically the voting systems industry, have become knee jerk and reactionary and it's not necessarily their fault. Machines are rushed into development to meet constantly changing standards or requirements from jurisdictions and then rushed into production to be deployed in the fields to meet aggressive deadlines. For the voting systems vendors, trying to meet the moving target of federal requirements and 50 unique state requirements is like trying to change the tire on a car going 100 miles an hour down the road. It's impossible. At some point, and I think probably sooner than later, and I use the term "improvements" of these systems and the costs of these improvements will come to a point of diminishing return. Simply put, in my opinion the industry, the field of elections administration, has got to settle down.

In closing, we must all accept that elections are not perfect. I think everyone in here would agree with that. And they never will be, in my opinion, as long as there are people involved with the process; elections officials, vendors, candidates, poll workers, the press, voters, advocates, all unpredictable pieces of a large puzzle. I believe our role as elections administrators is that of risk mitigator. We need to be risk mitigators. We need to identify the risks and then we need to have a plan to address those risks. As I've shared with my supervisors of elections here in Florida, failure is not having a problem during an election; failure is not having a solution to that problem.

And with that, I thank you for the opportunity that you've given me to speak to you today. Welcome.

[Applause]

COMMISSIONER BEACH:

Thank you. I believe we will be starting up again at 1:15. So, we'll see you in the other room.

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[The meeting of the Standards Board reconvened at 1:21 p.m.]

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CHAIR BARTHOLOMEW:

At this point in time I'd like to turn the microphone over to Commissioner Beach.

COMMISSIONER BEACH:

Okay, before I introduce our next speaker, I believe there was an inquiry and a clarification for our record. Ms. Jonda McFarlane.

MS. McFARLANE:

Jonda McFarland, D.C. It's come to my attention that something I said yesterday may have been misinterpreted and I want to clarify it for all you. When we were talking about the military voting and the problems about that, I made the statement that, and I thought I said both campaigns had been trying to get information and find out about that sort of thing and that the EAC had been happy to give, you know, the results of whatever research or anything, you know, as they would do to anyone asking for information about subjects that we cover to whomever asks for it. I did not mean to imply in any way that the EAC was working with, on behalf of, on the campaign committee of, or in any other way connected with a specific campaign. I hope that clears the air for you.

COMMISSIONER BEACH:

Thank you. Okay, now I'd like to introduce to you Mr. Travis Foley. Mr. Foley joined the Technology Division as a lab engineer in March of 1998, and was appointed to his present position in July of 2007 with the Nevada Gaming Control Board. Travis holds a BSE from the University of Nevada, Reno. And prior to joining the Gaming Control Board, he worked as a design engineer for a gaming manufacturer.

Thank you.

MR. FOLEY:

Thank you. Thank you for inviting me here today. I think that we always find it entertaining when we can take in Nevada what we've done with slot machines, and kind of convey the

information, the knowledge we have to other areas. So, thank you for inviting me here today.

Today, we're going to talk about the process that we go through in Nevada to approve a gaming device. That includes the review of the gaming device, but before that even happens the licensing process and the standards. I think through talking with folks at the Election Assistance Commission before, there's a lot of similarities between how we create standards, how we test equipment, how we approve equipment and that whole life cycle.

So, I know it was mentioned that some people are going to have to leave early. I don't know that my presentation will take the full allotted time, but since people are leaving early if you do have any questions feel free to raise your hand. I guess you need to be at a microphone in order to ask a question, but feel free to ask a question at anytime and interrupt me during the presentation.

So why am I here? I think we really got involved in answering questions about how we approve gaming devices back in 2003-2004. It really took off after there was an editorial in The New York Times where the last sentence of that editorial was, "A vote for President should be at least as secure as a 25 cent bet in Las Vegas." So after that was put in The New York Times, we had call after call after call. One of my predecessors, Joe Berloni (ph), I think some of you saw him speak, I believe, in Denver a couple years back, he kind of gave an overview of this same information. I'm going to go over that same information, so hopefully I'm giving you a refresher or maybe there' s something new that maybe Joe didn't include.

The biggest similarity between gaming devices and voting machines would be that device integrity and accountability. Whether it's a vote for President or whether it's hoping to win that $10 million jackpot, you know, we as regulators in this as those that oversee these voting systems, it's important to make sure that there's integrity in these machines; that you can rely on them, and more importantly the public perceives them as secure, as well as the accountability. We have to make sure that whatever activity occurs on those devices that we can go back and verify what happened, in case there's a dispute, we can go back and verify that the votes or the outcome of that game was registered correctly. And so it's very similar products. I think that when it comes to gaming devices it seems like we probably have had standards for gaming devices for much longer than you've probably had standards for voting machines because it seems like when there's that much money involved people are really proactive in trying to protect it.

So, today we'll talk about -- a little bit more introduction, I think we kind of covered that mostly. My name is Travis Foley. I'm the Chief of the Technology Division for the Nevada Gaming Control Board. I'll go over the Nevada Gaming Commission and the Gaming Control Board just briefly so you know what those two agencies are. It's actually just one agency, two different Boards. Then I'd like to cover the licensing process. That licensing process covers anybody that wants to submit a gaming device has to be licensed, so I'd like to kind of give you an idea of what it takes before someone can actually even submit one. Development of

standards. How do we go about creating standards? How do we go about making sure that the public weighs in? How long does it take? That's always one of the things that people always ask you about. Standards is like with new technology for us. Like, "Well, I'm going to come in with new technology. Your regulatory process is going to slow me down. So how long does it take"? What are we doing to try and eliminate, as much as possible, delays in getting new standards in place so that we can move forward with new technology? Then the gaming device approval itself. I think the relevant points there would be probably not actually how we test the games but how we try and convey to people what their expectations should be, how do we during that process give them an idea of when it's going to be done. That seems like that's always the question. "Well, okay, I know you have it. Why is it taking so long? When is it going to be ready?" So I think that's probably similar for the voting machines as well. And then field inspections, that's another part of our process that we perform in order to verify that the integrity is maintained in our gaming devices. I have no idea if there's any states doing that. I know that our state does some accountability testing after elections, but I want to just kind of briefly touch on that as well. And then questions and answers at the end, but feel free to interrupt me any time with a question.

So, hopefully, you guys take away from this session is what Nevada's regulatory mission is, and maybe there's some relevance there to what all of our missions are with voting machines, understanding the process for developing gaming device

standards, understanding the process for gaming device approvals, and understanding the process for gaming device field inspections.

I try not to use acronyms as I speak, but we get so used to using them and there's also some in the slides. I just threw this slide in here because I will make this presentation available for you. I didn't get it in before today, but I'll get it in and you'll have these, so when I use these terms in later slides you'll know what they mean.

Associated equipment. Associated equipment just briefly is pretty much anything but a gaming device that is in Nevada casinos. It's technology related. Slot metering systems, those are our systems that connect to gaming devices that record all the information that goes on in the gaming device that we rely upon for verifying that taxes are properly being paid. Manufacturers, pretty obvious. Operators, licensed casino operators. Cashless wagering systems, I may make reference to that. That's those -- if you've been and I know many of the people here are in jurisdictions where there's gaming now and you probably have ticketing, that's ticket in/ticket out. And MICS, minimum internal control systems. Those are the requirements of the operators on how they operate their business and it's, in particular, slot machines.

The Nevada Gaming Commission and Gaming Control Board is a two-part agency. It's a two-tiered system. The Commission is made up of five part-time members. They are individuals that represent a variety of different backgrounds. Right now I think we have a doctor, a lawyer, retirees; the non-gaming element of our agency. The Nevada Gaming Control Board is a

three-member body, and both the Commission and the Board are appointed by the Governor. The Board members are full-time capacity. Those are the guys that are making the day-to-day decisions when staff makes recommendations.

The Gaming Control Board itself is made up of seven different divisions. We have the Administration Division. That one is pretty obvious. The Audit Division, those are the folks that go out into the field and verify that people are paying their taxes correctly. The Corporate Securities Division and the Investigations Divisions, those are the divisions that do the investigations on individuals that apply for a license. The reason they're separate is our corporate securities group is primarily responsible for public corporations and investigations is more of the individual investigation. The Enforcement Division, those are our cops. Those are the guys with the guns that go out and arrest folks, as well as other special investigations in the field. Tax and License, those are the people that you pay your money to and issue the licenses. Kind of obvious. And there's my division, the Technology Division. I'm not going to bore you with the rest of the details of the other divisions, but I would like to talk a little bit about the Technology Division, my division.

My division consists of ITAG -- one of those acronyms I had to put in the other sheet, but that is our information technology audit group, those are our auditors -- the gaming device group which approve gaming devices and the systems group which approve the associated equipment that I mentioned earlier. And I'm also responsible for our own internal information technology group. I

currently have 51 staff, including myself. Three of those are clerical, the other 48 are all professional staff. They're all either engineers, whether they be computer engineers, computer scientists, electrical engineers, accountants, CPAs, and various technical accounting organization members. A real quick overview, it's probably pretty small and most of you can't see it back there in the back, but it's just kind the org chart of what I've already explained. Gaming devices, that's where we approve game systems, control board, IT operations and our field services.

Real quickly, on our regulatory functions. A division of itself does submission forecasting, policy development. So, when I talk a little bit later about technical standards for gaming devices, those come primarily out of the Technology Division. We're the ones that are looking at those constantly reviewing and making recommendations for changes to those standards. We interact with other jurisdictions. I think I saw Pennsylvania here, and I thought I might have seen Michigan. I see Michigan. A lot of jurisdictions you guys have your own labs, there's a few of them, as well as the ones that use independent labs. We're in communication regularly with your jurisdictions as well, not just ours. Games again, game tests and verification labs. So let me talk a little bit more about that one.

We test gaming devices, modifications to gaming devices. When I say we approve gaming devices, we do very few of them actually. Gaming devices on a yearly basis, we'll approve two to maybe four new gaming devices. We approve roughly 2,500 modifications to those gaming devices. So when a brand new

gaming device comes in, we go through that gaming device with a fine-tooth comb. Any changes they make to that gaming device after that, if they're changing a pay table, they're changing a theme, pretty much anything they change that's considered a modification that they submit. So most of our work is modifications to devices that are already approved. We also do those patron disputes if someone says, "Hey, you know, I was playing this machine and it went into this tilt and then of course, it hit the jackpot, and that's why it tilted, you know, and you're going to tell me that malfunction voids my play." So we go out there and we'll perform that forensic evaluation of the game and any data that we can find in the related systems that communicate with it.

Sure.

MR. WEIR:

Steve Weir from California. Have you ever found a situation where they hit the jackpot and the thing defaulted to tilt?

MR. FOLEY:

We have seen situations where games have hit jackpots and there was a question on whether it was legitimate, and it was. So to say that a tilt occurred, I can't recall one specifically. It's more often the case where someone claims that, "Hey, I just hit the $10 million" on the spinning wheel game, it was pretty common for awhile, that the spinning wheels would be spinning and someone would bump their knee on a door of the drop cabinet. And those doors are monitored. So they would happen to hit the door and a tilt would occur and those symbols would align on the reel strip because they stop when there's a tilt. So that's happened, but

those weren't legitimate jackpots. But we have many cases where something goes on, there's a misunderstanding, we come out, we look at it and we say, "Absolutely, they need to be paid."

We also assist our Enforcement Division with criminal investigations, not only from a forensic standpoint, but for cheat devices. So, I have a cheat video here, it's 12 minutes long and the audio is not great. I'd like to show it to you because I think it's pretty fascinating to see what lengths people will go to to try and cheat something that you approve.

UNIDENTIFIED SPEAKER:

Can we take notes?

MR. FOLEY:

Absolutely, take notes.

[Laughter]

MR. FOLEY:

So what you're going to see here -- and I have to say before I show you the video, the video is done by an engineer, it's filmed by an engineer and edited by an engineer. So the audio quality is bad, the presentation is a little weak, but it's cool. So what this demonstrates is this is a device that actually someone figured -- they found a particular gaming device cabinet in a gaming device that happened to be the most popular one in Nevada, they figured out a way to take a device, homemade device, and insert it in through the cabinet, through an available opening in the cabinet and set it up to when you put in a dollar bill it gives you credit for a $100 bill. So once you put this device in, and it's demonstrated here -- these individuals they didn't last long before they were

caught because when they started using it instead of, you know, $100, $200, they were doing $1,000 at a time. And so -- and unfortunately for them, fortunately for us they went to a string of casinos that are all related. So they all kind of went, “Hey, have you noticed anything strange?” And there was a pattern. So that was one week. The next week they tried it again and they got caught.

So I apologize, you’re welcome to laugh at the video. I’m not in it, so feel free. And I won’t tell the engineer that you laughed at him. Well, actually, I will.

[Viewing of Video]

MR. FOLEY:

So that video took, what 12 minutes, to kind of you give you an overview of it. It’s interesting how all the parts are off the shelf, don’t cost a lot to make it. When they were actually using it, they would walk in and they would be in and out of the location within, you know, 30 to 60 seconds with approximately $1,000. With those ticket in/ticket out systems I mentioned before, they would cash out that ticket. Usually it was $1,000 because those redemptions from it almost look just like an ATM. You can redeem those for cash and they were limited to $1,000. So that was -- they didn’t want to interact with somebody, so they would just go to the machine. So fortunately those limits are 1,000 and not higher or they would have taken much more money from those things.

So that type of device there, those are the things that we really like doing with our jobs, you know. What they do is they apprehend those individuals, they take that device, they hand it to

us and say, “Figure out how it works.” And we’re always amazed at how someone figured out that if you just open up at the belly door a little bit, you could somehow fit this angle down in there and hit a pin on that exact transmission pin, amazing. But once you get to know these individuals -- there’s a lot of small groups of these. They call themselves “professional gamblers.” Once you get to know them or know about them, you get to understand why they have so much time on their hands, because that’s all they do is try and figure out ways to cheat.

Did anybody have any questions on that?

MR. STRUCKOFF:

Richard Struckoff, Missouri. Did the perpetrators have access to one of these machines, so that they could develop this device?

MR. FOLEY:

That’s a good question. And we found that every time you come across a cheat device -- let me back up a little bit about cheat devices. To this point in our history, cheat devices that we’ve had have always focused in on money, whether it was money going in or money coming out. This was the first one we’ve had on a bill acceptor, but we’ve had coin in devices, we’ve had -- coin out devices is the most common one. We used to have hoppers. In every case these individuals do have machines. What typically happens is -- these two individuals that were involved in this were well known. What they would do is they create the device. They were using it in the casino for, like I said before, two weekends. We don’t think -- these individuals don’t typically go out and make

money by using it. They perfect it. They'll have machines in their house. You then pay them to come to their house and they'll train you, they'll sell you a device and you give them a percentage of what you take. So it's quite a racket there on that.

MS. DeBEAUVOIR:

Dana DeBeauvoir. Just a quick question. What was the purpose in having the lengthwise folded bill wrapped around the device?

MR. FOLEY:

That's the question we asked. We weren't sure. We were assuming because of the proximity to the bill acceptor. They had cash in their hand that they're feeding in. Maybe it was some sort of camouflage, I don't know. That's a good question. But it didn't have any impact on it at all.

Does anybody else have any other questions? All right.

So let's talk a little bit about licensing. As I mentioned before, everybody that wants to submit a gaming device to Nevada for approval, or even if they wanted to manufacture one in Nevada and send it elsewhere, they have to be licensed. That process takes time and can be very expensive. A couple examples of that are -- the best example I can give you that I was told recently from our Investigations Division is that if I had two individuals, say they lived in California right next-door to Nevada and they wanted to obtain a manufacturer's license, they lived in California their whole lives, really nothing -- pretty vanilla background, it would take roughly 12 months to review those individuals and cost them approximately $70,000 for those individuals. On the other end of

that spectrum we're currently investigating a company out of Australia who is international, has offices around the world. Just to get the investigation started, they were asked for roughly a half a million dollars in order to start that investigation. And that one will probably take 12 to 16 months as well. So it's a lengthy process. The licensing process, much like our approval of gaming devices, is front loaded. We do all of our work up front. We do very -- with the time that it takes, we're going very in-depth into these people's backgrounds, the companies' backgrounds. And once you get your license it's not that we trust them. We still do spot checks, but it's not as aggressive as it was in the initial investigation.

Standards for gaming devices. I know that there's standards for voting machines and if the process to adopt those standards is anything like ours, it can be frustrating to those of us who are responsible for actually approving the devices, especially when we see something coming we can't address in the current standards and we need to make a change. But we've tried to set it up in a way that kind of mitigates the length, and we've done that by kind of a three-tiered system. We currently have -- the starting standards are in our Nevada statutes, our state law. Those are standards that we can only change every two years since our Legislature meets every two years. Those are difficult to change simply because anything technical trying to -- and I apologize if I offend anybody -- trying to put things in layman's terms and explain something very technical, it gets very confusing and it's very hard to change. So we don't do a lot of changes there.

Nevada Gaming Commission regulations. There's a process much like the process for technical standards that there is, and I'll go more into the technical standards in a second, but there is an opportunity for the public to make comment, there's an opportunity for public hearings, so on and so forth, for those particular proposed standards. And the public can request that standards be made as well. So it's not just us changing the standards, they can request standards to be changed.

So the technical standard adoption process, we're required to do several things. One is we publish notice of the proposed action in such newspapers as the Commission tells us. It's usually just our local paper in Las Vegas and our paper in Carson City. I've tried to get them away from having to actually use the newspaper and use more modern means of communication, but that's in those statutes that I said are difficult to change. We mail a copy of the proposed standards or regulations to everybody that has provided their information or they currently have a license in Nevada. We have public workshops. But before we even get to public workshops we go out on a one-on-one basis to the people that the standard will impact and we talk to them specifically about those standards. And what we're trying to avoid by doing that is when we get these individuals in a group -- most times they're competitors of each other. So what we're trying to avoid is once they are familiar with what maybe somebody else wants, it turns into a battle of "Let's see what words we can get into here to try and give us a competitive edge over the other." So we do some one-on-one meetings before we get to public workshops. Once we get to public

workshops, it's open to the public, that's why it's called a public workshop, and we work through all of those items. Once we have the public workshops, it is again published to the public and written statements, arguments or contentions are submitted by interested parties within 30 days. Those ones are sent to the Board and those are then filtered back to us, we go through them, we accumulate all the different comments and we look to see if changes need to be made. Once we're done with that, we'll submit those out to the public again and they can then object, if they don't like that final draft, to our Commission who can consider those complaints and ask us to modify the standards if necessary. Once all of that's done, it goes on to our agenda so our Commissioners can actually approve those changes for both standards and regulations.

Now it sounds like a lot of work but for us we've gotten pretty good at it, and with regulations it can take us about roughly three to four months to adopt new regulations and about two to three months for new technical standards for gaming devices. So we're not in a situation where we only update them every so often, say every couple of years, every four years, every five years. We're able to adopt them whenever they're necessary. We also have the ability to issue policy. So if there's something that is an immediate need for an interpretation of a standard or to add some new condition to an existing standard, we can do that through published policy through the Board. And that can happen immediately once the Board decides it's an acceptable policy.

Does anybody have any questions on that? No? Okay.

Gaming device approvals. I've got a separate presentation here, which I might go through this a little fast. If I am and there's something interesting you want to see, just go ahead and slow me down. This is from a presentation that we actually give to our industry so that they understand what our process is because we face those questions that I reviewed before about, "Why does it take so long?" What are you doing?" You're holding us up from having the thing that's going to make us the next million dollars. So we give this presentation to them so they understand what it is. We make sure they understand what a gaming device is. Regulation 14, that's our regulation that deals with gaming devices. We make sure to remind them that they require a manufacturer's license in order to officially submit. What we do is offer compliance consulting for non-licensed manufacturers. So if someone is going through the process, we'll work with them ahead of time so that once their license is issued that they're ready to submit so they're not delayed further in that process.

It might be interesting to you the different types of gaming devices that we have. We used to have just conventional gaming devices, like the devices that we have here that you probably see when you walk through a casino. Those are changing quite quickly in Nevada. Right now the trend is moving towards network gaming, so no longer are the games just on the floor by themselves and determining win or loss by themselves. They're more like the lottery systems that some of your jurisdictions might have for gaming. There's a server in the back room. In the case of system based, all the activity occurs off the floor. It's no longer in those

machines. So the equivalent would be for a voting system is that if the voting terminal that you were at was just a display device; it was just basically like your Internet browser and it was connected to some central system that was recording all of the information, you know, displaying the screens and so forth. That's what gaming devices in Nevada are moving to is that centralized system, that network gaming. For us they're doing it because when you have 2,000 games on the floor and maybe you have some themes that just aren't performing well, it allows the operator to change those machines out to a theme that maybe their patrons would like better. It also gives them the ability so that when there's a busy weekend, instead of offering a nickel game they're going to offer a minimum quarter game; that they can change those things. There's some other benefits then as well. The benefits to us when we get to this network gaming is it gives us a lot more control and oversight of what's actually going on on the floor. Today when a slot technician goes to a machine, changes that machine to a different game, I might have to rely on manual notes. I don't have any necessarily up close and personal kind of surveillance of that individual or recording of what they're doing with these systems. We can do that. So while it gives them the benefit to play with those games available and the denominations available, it gives us the ability to monitor them more closely.

Also mobile gaming. We're now rolling out mobile gaming where if you have like a PDA you can sit by the pool and actually play slot machines while you sit by the pool. We don't have anybody doing that yet. I think everybody is a little concerned

about maybe having -- accidentally dropping those in the pool, I'm not sure. It's kind of expensive. And then also electronic table games. We're moving away from the standard, you know, manual table games to full electronic table games like craps and roulette and so forth.

So our approval process overview. There's an initial submission, lab evaluation and testing, issue reporting and resolution. That one is critical because we set expectations. It's going to take us this long on average to approve your gaming device. This issue reporting and resolution and manufacturer correction section is the biggest time consumer for the approval of a new gaming device.

I can give you an example of two different devices. One came in and we had no issue reporting that they had to resolve and no manufacturer corrections. That device, including the field trial and the Board and Commission review, was approved in seven months and on the floor. We currently have a gaming device that's on our agenda this month that has taken over 18 months to actually get to the point where it's going to be approved. So a dramatically different timeframe. The reason being is that this issue reporting and resolution and manufacturer corrections, and I'm sure this is the same with your voting machines, is that if somebody submits garbage, or something that doesn't comply I guess I should say, we have to go through over and over and over again trying to get -- we actually turn into quality testing or product assurance for these companies. They submit them, they're so horribly bad, we have to go through and point out everything that they've done wrong and

ask them to fix it. So this one with this particular game that's being approved this month, I think we probably went through eight to ten different iterations with them trying to get it to the point where it was compliant. So in those cases where you're an operator wanting these devices you're like, "Well how come I got this device in seven months? How come this device took two years or 18 months?" We're kind of -- it's problematic for us because we're not allowed to divulge that information to the operator asking. We can only -- we're bound by law to not give out that information except for the person who submitted it. So we're kind of strung there saying, "Well, I can't really tell you. If it complies, it gets approved quicker." That's all we can say. But that's the biggest problem we have with getting things approved in a timely manner.

We also have field trials. We require that the devices go out into the field for a minimum of 60 days where we closely monitor it. We discuss with the operator, with the manufacturer and with the patrons that actually play it on their experience so that we can have that information available to our Commission members. And then the Board and Commission review. We make a recommendation, the Technology Division does. The Board and the Commission will review our report and then make a final determination on approval on those games.

Our submissions, I'll go through this quickly, this is probably not too interesting for you, but we have -- they're required to submit compliance reports on how it complies, statements that they're attesting to how it complies and they believe that it does comply with everything. The one thing that might be different from what

you guys do for voting machines is that source code. The source code that is used in gaming devices they're required to submit to us. So if there's any issue with that code or that game in the field, we have the code from which it was built from. So we can go back and perform that forensic investigation because what happens with the source code is, for you that may not understand how the source actually becomes executable, is it gets compiled and it turns into a completely different image and you can't necessarily look at an executable what's running in that gaming device and know what it is or what it's doing or what it's supposed to do. So we have to have the source code so we can build those images and compare them. So we have had cases in the past where we've come across, one in particular, there was a company called American Coin. They program their own poker machines, and they were an operator that operated bars. So they would have like 15 machines or less in these bars. So what they did is they inserted what we call a gaff, it's a software cheat, into a graphics program so that as you're playing as a patron every fourth royal flush it throws away and gives you another outcome. So they had this program in there. So what we were able to do is go out there, we can take the software that was in the field, look at the image, compare it to the image we had, go back to the source code we had and verify that there was this piece of code added and this is exactly what this piece of code does on that. So that's very critical to our approval process, and the integrity of gaming is having that source code.

One of the things we do to help set expectations is we develop a test plan. What we do when we sit down with anybody

that's submitted is that we develop a test plan and we give them the dates on which we think that these things will be approved. So what we do is we always try and deal with our vendors is set expectations with them and hold ourselves to those standards. So we give them when they submit an idea of how long it will take. That's helped us tremendously from that manufacturer going to the operator who wants to buy that product and saying, "Look, I'd love to sell it to you. They're on my dock. I'll ship them to you. It's just these darn regulators won't get it approved." So we can send that out there and they can also -- so they don't this -- there's no mystery surrounding our process.

We try and test critical components first, interoperability with other systems. We also perform the audit on these gaming devices. We charge $150 per hour of our testing. Those games that I referenced before, the one that took seven months, that roughly cost $40,000 for that manufacturer to get that approved. For the game that took 18 months, it cost $160,000 in lab time in order to get it approved.

A little bit more on our issue reporting, what we go through. We make sure that once we tell them what the problem is they have to submit to us in writing how they're going to fix it. That way we try and eliminate them just guessing at what the fix is and submitting it. The comment process, that's where make sure people understand it and go over and over and over it again.

Manufacturer questions, I already touched on that a little bit. Field trial, I touched on that as well. We limit it to 180 days. So if something is in the field and it's just having a lot of problems and

we get to that 180-day mark, they have to remove it from the field. And it's not going to go on the agenda. It's not going to be approved. They'll have to resubmit and start the whole process over again. And that happened to the device that took 18 months. It's been on trial for 180 days and the manufacturer was given the choice of taking it off the field trial and resubmitting or taking their chances with the Board and the Commission, and they choose to take their chances with the Board and the Commission. So we'll see how they fare next week. Once it's in the field, manufacturers are not allowed to modify devices at all. And they weekly report to us, you know, what's going on with their devices.

So the final review, like I believe I've already mentioned, we perform the tests, we make recommendations, the Board reviews, they also make a recommendation and our Commission acts on that recommendation. I have never in my 11 years with the Board seen a gaming device go before the Commission and have it rejected. That's usually a situation where somehow the Counsel for those manufacturers find out ahead of time and somehow miraculously it gets withdrawn from the process, I don't know why that is. But...

Any questions on gaming device approvals?

MR. ENGLISH:

Dan English, Idaho. I'm just wondering how many approved vendors do you have of this equipment?

MR. FOLEY:

Sure. Right now we probably have 30 active manufacturers. Of those active licenses, I should say, there's probably only eight

that are regularly submitting items to us. And then of those eight, there's really only about eight to 12 different platforms, gaming machines. So it's a pretty small number. Once one manufacturer develops a new one, they all do. But usually there's only -- when you go on a casino floor there's a lot of variety, it looks like it. It's really only about eight different machines with just different glass and graphics on it.

So independent laboratory testing, I put this slide in here. It's not something we normally talk about, but I know that for the voting machines that there isn't a lab I guess for testing those, at least not a federally funded or a state funded lab that does that. So independent laboratory testing I think is probably relevant to the situation with voting machines. A majority of gaming jurisdictions use independent laboratories for testing. Nevada, New Jersey, Michigan, Pennsylvania, Mississippi somewhat, they all have their own labs. The rest of the jurisdictions use independent laboratories, primarily a company called Gaming Laboratories International. Now we don't use -- we've been around so long that's why we have our lab. We have used Gaming Lab, however, an independent lab in the past, so I can kind of speak to that experience. When you're using an independent lab, you know, what we have seen is there's nothing we can do to control how much they charge the vendor; they're direct bill that vendor. The important part to us was we created the testing that they would perform. We didn't allow them to come up with their own test. We said, "Here's what you're going to test. Here's what we expect. We're going to review your results and we're going to make the

final determination on whether we want to approve this or not." And we would go out and we would inspect those laboratories to make sure that they were complying with our requirements. I think that's probably the same with like an accreditation. We don't really call it accreditation, we would allow them to use them, but it's very effective. The only suggestion I would strongly make about using independent laboratories is that if you don't have someone -- if you're using a laboratory and you don't have someone that's technical, you don't have someone that understands what's required and should be able to understand what results they send back, then it's fruitless. If you can't -- I can tell you from experience when we used those labs, we told them about the test, we'd get results back, but if we didn't know what we were looking at, there was a lot of things that would have gotten through that we wouldn't if we were testing it ourselves allowed. So it's very important to have someone that knows what these labs do and can go in and inspect them and make sure what they're doing and review their work. I don't want to guess at how much GLI would cost for those gaming devices, but when I said ours was, you know, 160,000, theirs is at least triple what we bill. And they are a business for that matter so...

The Technology Division inspects gaming devices every day. I'll talk a little bit about the field inspection process. We go out in the field every day and pull the programs out of slot machines and verify that they're approved. We're currently working on the ability with those network games, that I mentioned earlier, to remotely connect to them from our office and interrogate them

whenever we want 24 hours a day, seven days a week, without interfering with operations. Right now if we go out and inspect a gaming device we have to take it out of service and it's probably going to be out of service for 15 to 20 minutes per machine to inspect it.

Our Audit Division that I mentioned earlier, they go out and they use those online slot metering systems that I referred to before to verify that the games are working as they're expected to. So when we approve a gaming device we say, "Okay" -- we do the math -- "that gaming device should pay back 98 percent over the life of that game." Our Audit Division goes out and will look at the actual money that went in and out of that machine and say, "Okay, here's the theoretical, here's the actual. Do they compare"? If they're not within a 4 percent spread either way, because there is some volatility built in, they'll go in and investigate further. So that's another part of our inspection process. Operators are also required to have independent audits and inspect their gaming devices on a regular basis. So we have not only the Technology Division, the Audit Division, independent auditors and the operators themselves have to conduct that testing.

When we inspect a gaming device, we test the software. We pull those programs out like I mentioned. The ones that we're looking for are unknown, disapproved, or gaff. Unknown, we've never seen it before; disapproved we've seen it and it shouldn't be in the field anymore; or gaff which are the ones that are of a very serious nature. In all three cases if we find them, we remove them from the field and require them to upgrade them to something that

is approved. So we'll take them right on the spot. We also inspect for any tampering or hardware modifications. A good example of that is the video you saw. You saw that you could take that little crowbar device and you prop the door open. Well, it did leave little marks on that belly glass door. So when we go out and inspect we look for things like that as well. We look to see if there's any extra wiring harness. We look to see if there's any -- it looks like anybody has been trying to break into the device. We look for those things as well.

All right, questions?

MR. DOWLING:

David Dowling, Nebraska. You showed us an example where the general public was cheating the house. Have you run across instances where the house was cheating the public?

MR. FOLEY:

We definitely have, like the example where the house was the manufacturer of the machine and they inserted the software gaff into it. Most of the time the house cheats the general public by not taking advantage of gaming devices but taking advantage of what we call "player tracking systems." Player tracking systems are those systems that when you go to the casino you get a card and you put that card in the machine and it keeps track of your play. Well, you accumulate points. Those points can be used for free play, they can be used for buffet, they can be used for whatever. We've seen a lot where the employees of the operators will, if they know someone has accumulated a lot of points, will steal their points. Maybe they will add points to their friend's accounts. We

do see that quite a bit actually on those accounts, yes. And I hate to admit it but we've had cheating on the regulatory side, on our own side. We've had cheating on the operator side and on the manufacturer side and the public. So in every area we've had issues.

UNIDENTIFIED SPEAKER:

So there's a lot of it.

MR. FOLEY:

Well I mean all you can do is try and stop it. There's no way to avoid it. I mean we're prepared right now, because we're going into new technology, you know. Right now some of these guys that cheat hoppers, on the hoppers that pays out the coins, they take a coat hanger, they can bend it on the bumper of their car in ten seconds and they can stick it in the machine and empty the hopper with it, you know. They're very good at it. So that's kind of a very remedial way to cheat a machine. Now with the new technology we're doing everything we can to put precautions in place so that they don't get cheated or they don't get actually get real program hackers, software hackers, Internet hackers trying to hack into our casinos. But we fully expect that they're going to try and we fully expect that at some point someone is going to succeed. So that's just -- in those cases then you have to become reactive. I can say with mobile gaming we were really scared, not from the technology, but the industry was really scared about mobile gaming. It's wireless, you know. Everybody has heard about wireless and how you can hack it. The standards we created for wireless for that first system that we put out in the field, it was actually on trial when a

convention came in to down called Def Con and Def Con -- I think actually a black hat might have been there as well, those are the computer hackers -- they always come in every year. And the stories are great because what they do is they come in and all of a sudden all the ATM machines in a location will have a nice new slogan on the front of them on their displays or they'll show pictures. They will set off all the fire alarms because they're hacking into those systems while they're in the hotel. And you should see it because we're part of a multi-agency task force during that convention where all we do is we go to these places, we try and look -- we're pretty successful at looking like geeks, so my folks can fit in. Usually the police force guys they look a little too like police, so they have a hard time sneaking in. So we go there and we listen to what they say. And fortunately for us they knew that the wireless was there, you know. They went in and they hacked the fire alarm systems, they hacked the ATMs as far as the displays go and they hacked a lot of the systems. The hotel systems, that's their favorite is trying to get into the hotel systems so they can unlock any door in the property. There was some increased activity on our wireless network, but they weren't successful in actually accomplishing anything with it. So we kind of took that as -- kind of patted ourselves on the back that our standards work, but we in no way took that as we're going to be a hundred percent successful all the time on that.

MS. DeBEAUVOIR:

Dana Debeauvoir. I'm wondering if you can give me some kind of an orientation about your level of fraud. In the elections

business we've been accused of having huge amounts of fraud or activists and other people say, "Well it could happen." And we get a lot of those kinds of scenarios. The reality is, and I think most of my compadres here would say, is that really we just don't have a whole lot of fraud going on in elections. There may be inappropriate suggestions at the polling place in the handling of people, there may be voter registration shenanigans. But the actual voting itself -- and it isn't really -- we haven't seen people take advantage and use us that way -- it just doesn't happen, most of the time. It sounds like for yours it happens a lot. Can you give me some kind of -- can you orient me from where I'm standing what really the risk of fraud is at your level and what lessons we might learn about our relatively clean system compared with one that deals with money that might be a little bit more inviting?

MR. FOLEY:

It definitely is more inviting. And I don't want to give the impression that using the term fraud that we're wrought with it. We have, you know, a long history. So we have examples of it at every level. It's not frequent. To just talk about cheating devices themselves, this is the last cheating device, the one I showed you earlier, that we've received in the lab and that was three years ago. Before that it had been another three years before a device before that. The level of fraud I think is at its highest in the casino operations, the handling of the money. That's where the fraud is. I get a blotter every day that, you know, who's been arrested where. And there is a lot of fraud, daily fraud, especially in tough economic

times where casino employees are stealing; stealing player points, stealing money, all of those types of things.

MS. DeBEAUVOIR:

And that is different though than...

MR. FOLEY:

Yes, that's different than -- that's an operation issue for the operators. It's not anything that we have direct oversight of. I think that really a lot of what we -- our rules are set up to do, not in our technical standards but in our regulations, are in place just because of the perception, like what you're saying, is that people perceive it is that it's wrought with bad things; that casino operators are constantly just trying to rip you off, the regulators are in their pockets, you know, and things like that. So, you know, from our experience the best way to do that is to try and manage that perception. The reality of it is is doesn't exist. The casino operators -- if you look at the average payback in a slot machine in Las Vegas, it's ranges whether you're a local casino or a tourist casino, but it probably averages around 90 percent payback. The minimum required is 75 percent. So at that 10 percent margin for payback, that's how they build these casinos. It's a lot of money. They don't need that extra couple percent really. They don't need it. The market is providing them with enough to build multi-billion dollar casinos, so they don't need it. From our perspective, you know, we constantly get accused of maybe preferential treatment to one manufacturer over another maybe because one of them is 70 percent of our business. And so we work really hard to try and keep the manufacturers at arms length. We don't go to lunch with

them. We can't gamble in Nevada, you know. Those types of activities we try and curb them so that it doesn't give the perception that it's there.

Even on a daily basis, there's an individual right now that we're keeping an eye on because he's sending out a lot of misinformation. And he's perfectly allowed to do that, but we try and combat that as well. If someone is going to go out and say, "Look, I know what I'm talking about," use a bunch of fancy names, "these machines are rigged," we want to try and get the information out there about how they actually work and so forth. So...

Yes, sir?

MR. HARRISON:

Allen Harrison, Arlington, Virginia. You mentioned state standards. And if I understood correctly, you said that you can't change them less than two years. And then you said as an aside, if I understood it right, that the Legislature only meets every two years, ergo the Legislature of Nevada enacts the standards?

MR. FOLEY:

They enact...

MR. HARRISON:

And the next question is...

MR. FOLEY:

Go ahead.

MR. HARRISON:

...if there is this two-year period, what has your experience been in needing something more done and you can't for that two-year period?

MR. FOLEY:

Sure.

MR. HARRISON:

I'm trying to relate this to what we were discussing earlier about standards and our issue of time period to make certainty for a certain period of time.

MR. FOLEY:

Sure. I think...

MR. HARRISON:

What's your experience been with that?

MR. FOLEY:

Well, our experience is that we do have the ability to change standards more often than twice a year. But if it was twice a year, the regulatory process would end up being a complete bottleneck for the ability of manufacturers to get product to market and for operators to actually buy that product and make it available to their patrons.

MR. HARRISON:

Uh-huh.

MR. FOLEY:

The statute creates the beginning framework where they then give us some authority to create our regulations through our Commission, which we can enact those in a much more frequent basis. We can initiate that at anytime, and it takes roughly three to four months in order to make those changes.

MR. HARRISON:

Thank you.

MR. FOLEY:

Yes?

MS. JOHNSON:

Sarah Johnson, Kentucky. I'm curious about your Board, the Board members of the Nevada Gaming Commission, the two different Boards. Are those appointed members? Elected? How do they get on the Board?

MR. FOLEY:

Those members are appointed by the Governor and they serve four-year terms. And our statutes require that one of the Board members be an accountant or having an accounting background, one of them have a law enforcement background and the other to have a legal background. And so right now our sitting Chairman I think has been Chairman for 12 years now. The Board member that I report to is brand new, just started in January, which is always fun going through a new Board member getting them trained. And our other Board member has been a Board member for about three years. So...

Yes, sir.

MR. MERRIMAN:

Don Merriman, Kansas. You mentioned a little bit ago of something about source codes that you get from the manufacturers. Do they have a problem with other kinds of proprietary information that your Commission looks at and...

MR. STEVENS:

They do, of course, and I think that more so when we get into background investigations. It's very intrusive. Some of my

former co-workers have had top security clearances for government and the process that we had to go through ourselves, much like applicants do, was more intrusive than that. So they do have a problem with it. But it's made very clear to anybody that applies or wants to do business in gaming in Nevada that it's privileged and you give up that kind of privacy if you want to do business here. I think a lot of that stems from the days back where there was a lot of organized crime and that type of thing. It was necessary to root that out, and it's necessary to continue keeping it out of our industry.

Any other questions? All right, well, I think only a few people fell asleep. Oh, we got one back there.

MR. STEVENS:

Anthony Stevens, New Hampshire. Can you give me a sense of the overall spending level on this that you have annually dedicated to this particular aspect?

MR. FOLEY:

Sure, absolutely. My budget for my division is roughly $4 million a year. 3 million of that is personnel costs, the other million is for facilities, for equipment and other operating expenses. And that money is paid for not from our state's general fund, it is paid for from revenues from the investigations.

MR. STEVENS:

A further question if I may. You have a lot of people in the field sort of doing follow-up work, doing inspections and that sort of thing that you work closely with as I recall. How many people do you have out there?

MR. FOLEY:

Well, in my division when we go out and inspect gaming devices, I have a total of six individuals. Not a lot when you're talking about 200,000 games in the state. But they are able -- they go out in teams and they're able to inspect every location once every 12 to 18 months. Now if you count that plus the enforcement agents being out there doing work, which there is roughly 120 of those and you count our Audit Division which is roughly another 140 individuals out in the field, you've got across the entire you've got -- our agency is only 440 people, but you'll have two-thirds of those individuals go out and do field work. So there's quite a few people out there.

MR. STEVENS:

And what is the total funding of that entire group of 440 people?

MR. FOLEY:

I believe -- well, of course, our Governor is reducing that this year, so I'll give you the current biennium number. I believe it's roughly $46 million.

MR. STEVENS:

If you were to look at the same sort of workload that we're facing, I don't know that you've assessed it, and were to compare that workload with your workload, I believe you have two or three big systems every year and 2,500 or changes, how would you -- have you looked at that? Have you tried to compare the workload?

MR. FOLEY:

Well, I can give you -- I can tell you what happened. I mean, I think the situation that we have with the voting machines is that it's relatively new. I think that we started looking at these standards in 2003 I believe. I might be correct. I can compare that to when we started to get new technology. Our division was much smaller. In 2006 we doubled our staff because we knew what was coming. So as far as what the workload is for the voting machines, I can't say. It sounds to me from what I do know about it, you know, it took awhile to get through creating the standards, it took awhile to actually getting the labs up and running and getting them testing. It would be hard for me to speak to that because I haven't gone through that process. But I think that the important part about when there's a huge workload is that it's important to understand that because it's a big workload, because you can't get it done in a timely manner that should not impact your decision to, you know, continue to go through that process and make sure you uphold that integrity because I think, when we've been put under a lot of pressure to get things done quickly, it always potentially would lead to a sub-par product, a sub-par device that when -- so we always fall back and say, "Look I can do that. If you're telling me you want it done quicker, I can do that. But what's going to happen is I can't stand in front of you or I can't stand in front of the public, more importantly, and tell them that I have done everything that I can to ensure the integrity of that game and that they're safe when they play these games in Nevada." And usually when we have that conversation it usually allows us more time to actually complete

what we're trying to complete. So I don't know if that answers your question or helps or not.

MR. STEVENS:

I'm just trying to rough it out in my own mind...

MR. FOLEY:

Yeah, I don't know...

MR. STEVENS:

...whether you have a bigger job than us or a smaller job, and I can't quite get my arms around it.

MR. FOLEY:

Yes, if you'd like to discuss it, if you want to give me an idea of what the workload is, I can try and think through that with you.

MR. STEVENS:

Okay, thanks.

MR. FOLEY:

Yes?

MR. WEIR:

Steve Weir, California. Typically looking at source code, how many lines? And do you look at every line?

MR. FOLEY:

We look at every line. I don't know how many -- it's thousands and thousands depending on the gaming devices we have today because they're very -- they're basically like game consoles. There's tons of code. When a new gaming device comes in, we identify every major component of the gaming device that has to meet some sort of standard, and all of that code is

reviewed. So the randomness of it, the security of it, the metering of it, all those things are required line by line.

Now when modifications come in, they don't submit the whole package, they just submit what they changed. It's very modular. So when they send those modular items in, we can do a quick comparison to the previous code and then only look at the differences. So we don't have to go through the whole thing again on that. So...

Yes?

MS. CEGIELSKI:

Stephanie Cegielski, State of Colorado. You mentioned that you validate the firmware after it's been loaded on the machine.

MR. FOLEY:

Yes.

MS. CEGIELSKI:

How do you do that? We're not able to do that with voting systems currently.

MR. FOLEY:

Well, with gaming devices traditionally they have removable media in them. So we're able to unlock them and remove that media, put it into a device that we've designed. It's also commercially available, but we're more comfortable with the design that we come up with. And we read it, and our technicians have a signature database on their laptop that it looks it up in. Now when we get to things that I think would be more in line what we have today, more in line with the voting machines, is that we require as part of our standard a communication port to be made available.

And we strongly suggest a protocol that they use that will allow us to connect to that port and to validate the information on the device. So we don't actually remove the media, because we have a tendency when we remove hard drives for some reason to break them. So -- it usually makes people unhappy -- so we connect to it through a communication port through an application we design. We ask it a series of questions, interrogate it, and then we verify if it's something that we've seen before.

All right, any other questions?

MS. JOHNSON:

We had a big discussion earlier about Sunshine laws, FOIA, open records, whatever you call it in Nevada. How much of what you're doing with the testing, the certifying, I guess somewhat the investigations...

MR. FOLEY:

Uh-huh.

MS. JOHNSON:

...how much of that is open to the public? How much do you release to the public?

MR. FOLEY:

Well, we'll discuss in very minute detail what the processes are; what we do, how we do them. I mean, if someone wants to know what our standards are and how we test those standards, we'll tell them that information. We have checklists that our engineers go through to test. We'll provide that. When it comes to specific information on products submitted to us, by law we cannot divulge that information unless we're given permission by the

manufacturer of the equipment on that. So, you know, as far as being open, I know probably most of us have tough budget times right now -- but before I forget, if you guys are ever in Las Vegas you are welcome to come by and see a tour of the lab and what we do, before I forget. I know most people tend to fly to maybe California and drive over because apparently it's bad to come to Las Vegas for work, but...

Is there anybody else with any questions? Well I do want to thank you again for inviting me. I'm glad I came. I hope there was some information in there that you might find at least interesting, if not helpful. If any of you have any questions or, you know, want to have any other discussions, feel free. I'll be hanging around this afternoon, so please do.

And thank you very much.

[Applause]

CHAIR BARTHOLOMEW:

At this point in time, we would like to take advantage of some of the extra time we just captured and invite Matt Masterson back up here and take the resolutions off the table, so that we can move on in that area.

So, while he's working his way here, can I have a motion to take the Resolution Committee report and resolutions off of the table?

MR. POSER:

Gary Poser. So moved.

CHAIR BARTHOLOMEW:

Can I have a second?

MS. JOHNSON:

Sarah Johnson, Kentucky.

CHAIR BARTHOLOMEW:

I have a motion and a second to take off the table the resolutions. All in favor say aye. Opposed say no.

[The motion carried unanimously.]

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CHAIR BARTHOLOMEW:

Okay, we're back on. Peggy?

MS. NIGHSWONGER:

Okay, back to the favorite part of our agenda. Right? Well, maybe favorite to some people.

Okay, the next resolution that we are going to look at, and I know we'll have it up here in a few minutes, came from the Executive Board. This resolution comes about because we had heard remarks that members of this body were a bit surprised or maybe -- I don't know if surprised is the word -- that the EAC had decided to incorporate portions of the next iteration of the Voting System Standards into the 2005 Voting Systems Standards. And basically, I think there was the feeling that they were doing that without getting input from this body. And since we have not had a meeting since 2007, I think people felt like there was not the appropriate communication. And so, even though I think it was -- it was indicated yesterday that the information about all of this has been on the EAC Web site and that kind of thing, I think maybe there was just the thought that maybe there should be better communication between the EAC and this Board, who actually

gives recommendations to the EAC. So that's what this resolution is about.

I can read the whole thing or I'll just start with the "Resolved" part. "Resolved, that the EAC staff conduct regular telephone conferences to update the Executive Committee of the Standards Board or designated subcommittee of the Standards Board to provide updates regarding status of proposed Voting System Standards; and, be it further resolved that the Executive Committee of the Standards Board provide regular updates to the entire membership."

CHAIR BARTHOLOMEW:

The resolution has been put before you. Can I have a motion in regards to acceptance? Any motion?

MR. HANDY:

Nick Handy, State of Washington. So moved.

CHAIR BARTHOLOMEW:

And a second?

MR. SILRUM:

Second. Jim Silrum, North Dakota.

CHAIR BARTHOLOMEW:

We have a motion and a second on the approval of the resolution. Do we have any discussion or amendments? Hearing no discussion or amendments, all in favor of the motion say aye. Opposed say no.

[The motion carried unanimously.]

***

MS. NIGHSWONGER:

Okay. The next resolution came, actually, from the Committee yesterday, not the Executive Board, but from the Resolutions Committee. And if I could, could I ask John Lindback could you discuss this resolution with the body?

MR. LINDBACK:

I'm trying to remember it. Could you go back up so I could read it?

MS. NIGHSWONGER:

Okay. It was, basically, John, where we were asking that the review be of an in-person meeting prior to the final adoption.

MR. LINDBACK:

I don't think that one came from our Resolutions Committee.

MS. NIGHSWONGER:

Oh, it didn't? Okay, well, where did this come from, from the Executive Board? Oh, okay. Sorry, I guess it did come from the Executive Board.

CHAIR BARTHOLOMEW:

After reading it, this one did originate Wednesday with the Executive Board. And what the Executive Board was looking for was just to advise the Commission that any and all iterations or versions of the standards come back to the Standards Board for recommendation, prior to any final adoption.

MS. NIGHSWONGER:

Okay. So would you like the whole thing read or just the...

CHAIR BARTHOLOMEW:

Would you like the whole resolution read or just the "Resolved"?

[A majority of the membership indicated “Resolved.”]

MS. NIGHSWONGER:

“Resolved, that the EAC Standards Board requests the EAC to provide the Standards Board an opportunity to review and comment on the final iterations of the VVSG prior to all adoptions.”

CHAIR BARTHOLOMEW:

Peggy, I’d also like to say, I believe that this one was given to us, and I can be corrected if the rest of the people don’t recall, but it solidifies our value as part of HAVA as the government is looking at changing and cutting back, this just is to reinforce our value under HAVA.

MS. NIGHSWONGER:

Uh-huh, okay.

CHAIR BARTHOLOMEW:

I think that’s what it was about.

MS. NIGHSWONGER:

Yes, it’s all coming back to me now.

CHAIR BARTHOLOMEW:

Okay, the resolution is before you. Can I have either a maker or a seconder? Any support?

MS. JOHNSON:

Sarah Johnson, Kentucky. I move the motion.

CHAIR BARTHOLOMEW:

Okay, I have a motion. Do I have a second?

MS. BAILEY:

Lynn Bailey, Georgia. Second.

CHAIR BARTHOLOMEW:

Okay, I have a motion and a second to adopt the resolution as presented. Any discussion or amendment?

MR. FELOWS:

Madam Chair, Dale Fellows, Ohio. Point of clarification or information. When we say "final iterations of the VVSG," is that the one that we worked on in Austin? Or does that include the 2005 revision, or whatever it may be called in the future?

CHAIR BARTHOLOMEW:

I think it would include, my interpretation is all. Both of those and all of them in the future.

MS. NIGHSWONGER:

Uh-huh, I think that's what the intent was.

MR. FELLOWS:

Yes, I didn't see all the "whereases", so I wasn't sure exactly. And I guess my other point is, in what forum would this review and comment entail? My understanding was we were supposed to comment during the upcoming public timeframe, that 120 days, which they anticipate would be in late spring or early summer. Is that the timeframe? Or is this referring to a different timeframe or a different type of comment period or, i.e., a meeting or something of that nature?

CHAIR BARTHOLOMEW:

I think what this does, and again, this was presented to us, my interpretation and what I took from it is, that it is basically bringing forth the requirements of HAVA and making it more public and making it something that's reinforced. It's the exact way that we have done it in the past, we will continue to do it, but we want to

solidify and to bring to light the HAVA requirements; that we do get to see this on all iterations in the future, and the ones that are currently before us.

And if there's another Executive Board member that was present if I'm missing it, I think not, feel free. Any comments? Sue?

MS. McRILL:

I'd just like to offer, maybe, as a friendly amendment, that we adjust the language in that last line to read "all future iterations of the VVSG prior to adoption" to make the distinction between final iterations and future iterations. There is no final iteration, I would assume. This is a living document.

CHAIR BARTHOLOMEW:

Sue, could I have you state your name?

MS. McRILL:

I'm sorry. Sue McRill, Michigan, state representative.

CHAIR BARTHOLOMEW:

And are you making that in the form of a motion?

MS. McRILL:

Yes.

CHAIR BARTHOLOMEW:

As it is on the screen?

MS. McRILL:

"All future iterations prior to adoption." I don't think the word "all prior to adoption is needed." Thank you.

CHAIR BARTHOLOMEW:

And do we have a second on the amendment?

MR. HANDY:

Second. Nick Handy, State of Washington.

CHAIR BARTHOLOMEW:

Okay, we have a motion and a second on the amendment. Any discussion on the amendment? Seeing no hands, all in favor of the amendment signify by saying yes. Opposed no?

[The motion carried unanimously.]

***

CHAIR BARTHOLOMEW:

Okay, now we're back to the main motion as amended. Any discussion on the main motion as amended? Yes, Lowell.

MR. FINLEY:

Lowell Finley. I have another, what I hope is, friendly amendment in the "whereas" clause immediately above the "Resolved" clause. It still uses the term "final iteration." And to make this consistent and make our intent clear I think it would be better for that to read that "all future iterations" instead of -- yes, and remove the "the." And I want to make it clear that that would put a point on the fact that the meeting would need to be in person and not just an online opportunity to comment.

CHAIR BARTHOLOMEW:

And do I have a second on that amendment?

MR. HANDY:

Second. Nick Handy, State of Washington.

CHAIR BARTHOLOMEW:

I have a motion and a second on an amendment as written on the screen. Any discussion on the amendment? Seeing none, all in favor of the amendment signify by saying yes. Opposed no?

[The motion carried unanimously.]

***

CHAIR BARTHOLOMEW:

Motion carried. We have back before us the main motion as amended. Any discussion on the main motion as amended?

MR. FELLOWS:

Madam Chair, Dale Fellows, Ohio. Could we just real quickly see the rest of the “whereases” just to be sure?

CHAIR BARTHOLOMEW:

Would you like to view that? Or would you like it read to you?

MR. FELLOWS:

Just view it real quick is fine.

[Pause]

CHAIR BARTHOLOMEW:

Is there any further discussion on the main motion as amended?

MR. FELLOWS:

Madam Chair, if you can move it up one, I think where it says, “Whereas, the Standards Board voiced” -- is it “voice their concerns”?

CHAIR BARTHOLOMEW:

Is it the consensus of the Board to accept that as a friendly amendment being it’s grammatical?

[The majority of the membership indicated in the affirmative.]

CHAIR BARTHOLOMEW:

Any further discussion on the main motion as amended? Seeing none, all in favor of the motion signify by saying yes. Opposed no?

[The motion carried unanimously.]

***

MS. NIGHSWONGER:

Okay, the last resolution came to the Committee last night. And, actually, this is a fairly long resolution and I would like to ask Jim Silrum if he will explain this resolution to the body.

MR. SILRUM:

Thank you, Madam Chair. Jim Silrum, North Dakota. This resolution came about because this 110 member Board is filled with a bunch of rapscallion hoodlums that are hard to control and hard to contain, and we cannot possibly be controlled without some sort of sense of continuity brought to us by the EAC. And since there is a policy at the EAC for the Commissioners to change their DFO roles on an annual basis, it's difficult for that continuity to be provided by solely the DFO alone. And so we're simply asking that the EAC Commissioners and staff go back and take a look at ways in which they can provide some sort of continuity for this particular Board, so that when there is a change in Commissioners, either by change of DFO, or because a Commissioner resigns, or a Commissioner is no longer re-upped by the President, that we would be able to maintain that continuity, that flow, even though the DFO changes.

So, that's what this resolution is all about, but it's really because 110 members is just a very, very big Board.

COMMISSIONER BEACH:

Is it because you had three DFOs in one year?

MR. SILRUM:

Sure.

COMMISSIONER BEACH:

So I should not take this personally. Just joking.

CHAIR BARTHOLOMEW:

Jim, would you like to make that as a motion?

MR. SILRUM:

I so move.

CHAIR BARTHOLOMEW:

And I'll ask Peggy to read that for us so we know.

MS. NIGHSWONGER:

Okay, and do not take it personally. We've enjoyed all of our DFOs.

COMMISSIONER BEACH:

Can I make just one comment? The DFOs may not change year to year. It is the desire of the Chair to appoint the specific DFOs, so there could be situations where you would have a DFO stay on longer than one year. So it's not an automatic one year that it's automatically rotated.

MS. NIGHSWONGER:

She says that now. She hasn't been with us too long. All right, "Resolved, that EAC Commissioners and staff members research viable methods for providing strong continuity for the

continued functioning of the Standards Board; and, be it further resolved that the Standards Board DFO shall communicate the agreed upon plan to provide this continuity to the Executive Committee and the full membership of the Standards Board before the next DFO is assigned to the Standards Board."

CHAIR BARTHOLOMEW:

Okay, I have that moved by Jim Silrum. Do I have a second?

MR. DOWLING:

David Dowling, Nebraska. I would second the motion.

CHAIR BARTHOLOMEW:

I have a motion and a second. Do I have any discussion on the motion?

MS. JOHNSON:

Sarah Johnson. I think this is a very needed. And we do this every single Standards Board practically because we don't get that transition, we don't have that carryover, and we need consistency. And I think it's a great resolution and I urge everyone to pass it, please.

CHAIR BARTHOLOMEW:

Any further discussion?

MR. PALMER:

Don Palmer, Florida. Could you scroll down? I'd like to read some of the "whereases" just quickly.

CHAIR BARTHOLOMEW:

Would you like this read or would you like to read...

MR. PALMER:

No, I just read it. Thanks.

CHAIR BARTHOLOMEW:

Any other discussion? Seeing none, all in favor say aye. Opposed say no. Motion carried.

[The motion carried by a majority vote of the membership.]

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MS. NIGHSWONGER:

Okay, I think that is it for the resolutions. I would like to thank all the people who served on the Resolutions Committee. And for those of you who are new or just may not know this, all of the resolutions of this Board, past resolutions, are on the Web site of the EAC. So you might have nothing to do some day and want to go back and read those resolutions and see if any one is listening to us.

All right, thank you.

[Applause]

CHAIR BARTHOLOMEW:

Thank you very much. Awesome job and I'm thankful that it went so smoothly. Thank you.

I would like to make one quick announcement about the FedEx boxes, as a reminder. There are FedEx boxes and labels in the outer hallway. If you need any, please feel free to see Emily or Sharmili to get those.

And then the Commissioner has another announcement.

COMMISSIONER BEACH:

Yes, I just wanted to make actually two announcements. Our events coordinator, Emily Jones, it is her birthday today. So I'm going to embarrass her and wish her "Happy Birthday."

[Applause]

COMMISSIONER BEACH:

And on Monday it is my Counsel's birthday, Sharmili Edwards. So we're going to wish her a "Happy Birthday" as well, "Happy early Birthday."

[Applause]

CHAIR BARTHOLOMEW:

It is a little early, but if you'd like to go next door again for break, we'll be back here at 3:30.

[The meeting recessed at 3:10 p.m. and reconvened at 3:34 p.m.]

CHAIR BARTHOLOMEW:

If we could get started and finish our last presentation, I'll turn the mike over to Commissioner Beach.

COMMISSIONER BEACH:

We have our last presentation here on the Election Day survey. I'll introduce first Karen Lynn-Dyson, who is from our office, who is our Research Director. Ms. Dyson manages all of HAVA-mandated research and studies and other activities related to our Commission's agenda. She has 25 years of experience in program management and administration, primarily in the non-profit sector. Prior to joining the EAC, Ms. Dyson has worked for the United Way, The Council on Foundations, the Aspen Institute and Calvert Associates, a management consulting firm. And she has a degree from Ambassador College and the University of Chicago.

And also who will be presenting is Dr. Toby Moore with RTI. He's an elections and voting researcher in Washington for Research Triangle Institute, RTI, where he designs and directs election research projects in the United States and abroad. He's currently directing technical assistance to the EAC in support of our 2008 Election Day survey. Before joining RTI, he served as a project manager for the Commission on Federal Election Reform at American University. From 2000 to 2006 he was the political geographer of the Voting Section of the Civil Rights Division at the Department of Justice, where he served as redistricting expert and demographer. A geographer by training, he earned his B.A. from the University of North Carolina at Chapel Hill, his M.A. from the University of North Carolina at Charlotte, and his Ph.D. from the University of Iowa.

We are ready to begin, thank you.

MS. LYNN-DYSON:

Okay. Toby Moore and I are going to tag team on this, so I'm just going to give you a little bit of background/chronology on the Election Day survey. And forgive me to those of you in the audience who are already intimately familiar with these timelines/timeframes. Thank you for allowing me to just briefly go over what we've been doing a little over a year on this.

Going back to last December and January, we, with our previous contractor Kim Brace from Election Data Services, did a number of in-depth conference calls. And we did five of them and they were a couple of hours each and they gave us a wonderful opportunity to hear from folks in the field about the 2006 survey and

what folks found helpful, not helpful, problems, challenges, what could be done to improve the 2008 survey. What we did is Kim and I took that information very much into consideration, and then starting last January at the winter meetings of NASS and NASED we presented to that body an initial draft of the 2008 survey. So we really began our work in January of last year on this survey and then we put forth the first public draft of the survey on the *Federal Register* in March of last year. There was a three-month comment period in which the public, local election officials, state election officials, interested parties had an opportunity to comment on the 2008 draft Election Day survey. During that public comment period, which was 120 days, we received 53 comments from the public, from you all, and others and we logged those comments. And what we did in June of last year was began to work with RTI, Research Triangle Institute, who had been chosen through a competitive bidding process as the contractor who would perform the data analysis and the data collection for the EAC on the 2008 survey. So what RTI did along with EAC staff last summer was worked long and hard to put together a survey instrument that had taken into account everything that we had heard from the public, from you all, essentially from January of last year through to May of last year. We submitted the final draft of the 2008 survey to the Office of Management and Budget for their final review and acceptance. We got that final acceptance from OMB through the clearance process the third week in December and we distributed the final survey to all states the end of September of this year. So following on that, we

also gave to the states in the first week of October the data templates for that Election Day survey.

That gives you a little bit of a sense of the chronology of what we went through for the eight months or so prior to you all getting the final survey, which all your states got the last week in September, although you would have seen it many months before that. And the instrument was not vastly different from March of last year to the final one in September.

Before Toby comes up I want to just touch on, if I might, a couple of things you should know, and I know you've had some conversations this morning and a resolution related to some timeframes and deadlines around the Election Day survey. For those of you who are not aware of the fact that the Election Assistance Commission is required by law to adhere to the Paperwork Reduction Act. You heard me referencing this OMB, Office of Management and Budget, clearance process. Paperwork Reduction Act, everyone laughs and says it's a misnomer. We are sitting there spending hours and hours and countless reams of paper and time working on the Paperwork Reduction Act. And that is in our case, in our instance something that applies to survey instruments and a responsibility that we have to report to the Federal Government about the burden that our survey instrument will place on our respondents, you all. That process takes 120 days. We're required by law to do it. There are a number of steps and phases to it, hence the reason why I referenced back from March through May of last year. Those couple of comment periods in which the survey appeared in the *Federal Register*, we waited for

you all to comment on it, we had to go back to OMB, there was a second period in which OMB reviewed it and then waited for comments, that whole process takes 120 days. So I just wanted you to know about that.

The other thing I wanted to touch on was our Election Data Collection Grant program, I know there are grantees in the audience, just to refresh people's memories or bring other folks up to speed. The Election Assistance Commission received in December of 2007 a $10 million appropriation so that we could in turn give five grants of $2 million each to states to improve the collection of election data at the precinct level for the '08 election. The grants were given to enhance the capacity of local jurisdictions' ability to collect accurate and complete election data so that they could develop and document administrative policy and procedural best practices for the collection of that data, again precinct level data. There were some ten states that applied for the grant. The five winning states were Illinois, Minnesota, Ohio, Pennsylvania and Wisconsin. According to this grant award, states were required to collect precinct level data related to the number of registered voters, the number of active/inactive voters, the number of persons who participated in the election, number of provisional ballots as in cast, counted and rejected, number of votes cast at polling places, via absentee balloting, at vote centers and via provisional ballot, and the number of votes cast for federal offices; President, U.S. Senate, U.S. House, write-ins and overvotes. So those are the basic data elements that all of the grantee states were required to report at the precinct level. I'm pleased to say, however, that those

five grantee states have indicated to us that they have planned to, or have already, collected precinct level data for all of the Election Day survey questions.

So with that overview of the history, a little bit about our Election Data Collection Grant program, I'm going to let Toby Moore talk to you in a little more detail about what is actually going on at this very moment in terms of the results from the collection of information on that survey.

DR. MOORE:

Thank you, Karen. You all are a responsible bunch to be in here on a Friday afternoon. I'm very impressed by how you've maintained your attendance here. I'll be brief regardless given the hour.

As Karen said, we're talking about basically three different projects here, three different data collection efforts. The first, the Statutory Overview which we're in the final stages of writing our report. I think this is going to be very helpful for the election community generally. We had staff at Moritz College of Law at Ohio State who drafted the report for us and I think they've given us a really good sense of the diversity of definitions and terms across the United States, even on things that you would think there would be great common agreement on. And I think this is going to be a really good step in trying to move us toward a better understanding of what we call the same thing by different terms. That report should be finalized in the next few weeks.

The quantitative data, which is what we think of as the Election Day survey which we're in the final stages of data

collection, we have about 40 states and territories of 55 that we've got in. We hope to have data from all 55 in the next few weeks. And then we'll be in March looking at that data, checking it, sending it back to the states for review and correcting it, and then we'll turn to report writing for the various reports later.

And then the state grantee program which Karen talked about, as well. And we're looking forward to getting that precinct level data which is really the first time that anybody has collected precinct level data at this scale. And it's going to tell us things that we haven't been able to tell before.

The quantitative data, which is mostly what I want to talk about. For those of you who are not familiar with this iteration of the survey, six sections; voter registration, UOCAVA, the absentee voting. Note that many of these questions, for instance the UOCAVA, in order to be able to make sense of the data that's required to be reported for UOCAVA you have to break it down to such a fine level of detail that it requires a lot of questions to make sense and to make sure that we understand the data that's being reported. Absentee voting and administration. There were a set of questions on poll workers that I think is going to produce some interesting data on poll workers' ages and the ease with which jurisdictions are recruiting poll workers. Provisional ballot questions, the reasons for rejection and the Election Day activities, the voting machines, poll books -- use of poll books and voter participation. It's a lot of questions and we're very mindful of the burden that this places on local and state officials.

Our main tool for collecting the data, it's not the one that every state used but I think it worked pretty well, was an Excel-based template that we developed that allowed state officials to compile the data from all of their jurisdictions for every question in the survey. I think this is the best tool for the vast majority of states. I think it had some programming errors that we've been correcting. It wasn't a perfect tool but I think it was a good one, and I think we've gotten good feedback from folks on that. I think the next iteration could be more user friendly.

We also set up a project Web site that I think was very useful for transmitting information, frequently asked questions, corrections, updates. And that was also our tool for receiving the data, although we also could accept it just from being emailed.

You know, RTI, Research Triangle Institute, does data collection for a wide variety of federal clients and private clients. And so when we put the Election Day survey in the context of collecting data in health, education, and other areas, what are some of the challenges of the Election Day survey? The first is that it is a burden on state and local officials, there's no escaping that, particularly given the diversity of the data that we're trying to collect which is often from multiple offices and the fact that many local officials are short staffed as it is.

There's a lack of agreement on terms and definitions. It's impossible to write one questionnaire for 55 different states and territories and have it apply equally to say Oregon with its vote-by-mail system and Florida or North Dakota and the Election Day registration and all the different systems we have. So that's a

challenge that's never going to go away. You try to minimize that and make it as applicable across the jurisdictions and states as you can, but that's always going to be a challenge.

And there's a wide variety of local capacities. We all know that there are many small local election officials that lack the staff or sometimes the technology to be able to report their data as readily as some larger jurisdictions can. So trying to manage data collection across the diversity that we face is going to be an ongoing challenge.

More fundamentally, a lack of an incentive structure. State and local officials they don't get as much out of it as they have to put into it. Yes, they get the feedback from the data that they collect and I think the way the Election Day survey is starting to be integrated into what the states are doing with collecting their own data is beneficial, but for a county clerk or for a lot of states it's an expenditure that they're not going to get an immediate return on. If we're doing a survey of people we could offer incentives, you know. If you're doing a survey, you can offer $50, $100 or gift certificates to Target or something. We can't do that with this survey and that makes it a little harder to do.

And it's still only in its third -- this is only the third time the EAC has done this. It's still being institutionalized and stabilized. And most of the major data collections that we do are ongoing efforts that have a long history. If you look at the American National Election Study, that's been going on for 50 years, the Census for 2020 years. But most of the major health studies have

gone through this kind of growing/learning curve and that's been a challenge as well.

I should point out that Kim Brace and Clark Benson who worked on previous surveys are working with us as subcontractors to us and so we've had that continuity and we've been able to build on the good work that they've done previously. And they've been a really invaluable resource in trying to stabilize this and give some continuity.

One thing we've kind of been throwing around is that for the most part we've worked on this model of collecting the data which is to go through the states no matter what the state data collection system was. So we go to the state and then the state goes to localities or gets it out of their central database, but we work through the states. It may be that an alternative model would be to provide state officials with a model in which we would compile the data from what the states collect. In fact, Ohio did this for the Election Day survey. Ohio sent a survey out to all the counties and then they sent all their county surveys to RTI and RTI compiled that data. So it may be that some states would find it attractive to send to their counties -- in fact, I had a graduate student at Reed College in Oregon draft what would be kind of a 1040-style reporting device that you could use. So I mean as opposed to always going through the states, there is an alternative model in which we could go directly to local jurisdictions, have them fill out kind of a machine readable form and we could take over the compiling of the data for states that find the compiling of the data to be the major chore.

So there are different ways to do it and some things we're trying to talk with the EAC about providing additional tools and mechanisms that would ease some of this burden, particularly from state offices that are having to spend a lot of time in collecting this data. And that's one idea is to have this kind of more like a tax return kind of model rather than have the states collect it and compile it.

And I'm really interested in any comments or questions or suggestions you have. Here's my contact information. And I know Karen and I are looking forward to any comments you have and we look forward to bringing this to a successful conclusion writing the reports this summer and then doing whatever work is necessary to lay the groundwork for 2010.

Thank you.

MS. LYNN-DYSON:

Before we take your questions and answers, let me just talk about timelines from here on out.

The Election Assistance Commission is statutorily required to report on the NVRA data by June 30th of this year. And so we with RTI will be hard at work in pushing forward in the months of April and May especially to get that data compiled and analyzed so that it will be in report form in time for that June 30 deadline.

Toby mentioned the Statutory Overview which is a critical component to RTI being able to analyze well and appropriately the information that we have gathered and we will report in the NVRA report.

Another deadline is looming, June 30, for the report of our Election Data Collection Grant Program. It's written into the law that we have to report on that. Also, as we speak, we have an independent evaluator who is in the field, an organization called ICF, that is in the five states doing an evaluation; what worked, what didn't work, and they will be reporting back to the EAC in April. And we also by law are required to work with your companion board, the Board of Advisors, on the review of that report and the presentation and publication of that report for that June 30 submission to Congress as well.

We will be reporting to Congress on the UOCAVA data and on the overall 2008 Election Day survey in the fall. We anticipate publication dates then in the October/November timeframe. So by November of '09 we will have wrapped up all of our reporting requirements on the '08 survey.

I certainly understand that you all have had some good conversation here over the last couple of days about the 2010 survey timelines and deadlines related to that. And please know that we have already taken those kinds of things into consideration and will be working very diligently this summer to tweak perhaps the survey so that it is fully ready and prepared for the states to begin administering or begin their work with it in the fall.

So I guess with that, Toby and I are open to Q & A about this year's survey, next year's survey. Steve?

MR. WEIR:

Hi, Steve Weir from California. Is there any sense that any of these, especially the Election Day survey coming out this fall, may be driving federal legislation?

MS. LYNN-DYSON:

I can't think of any especially offhand. Was there some particular that you had in mind?

MR. WEIR:

Just wondering.

MS. LYNN-DYSON:

I mean, I'm certainly not aware of any.

John?

MR. LINDBACK:

John Lindback from Oregon. Maybe this is probably better answered by Toby since he might know more of the details. Could you give us an idea of which areas of questions the states have had the most trouble with in their responses to provide data that's meaningful?

DR. MOORE:

I think it's speculative until we're able to get into the data and detail and then we'll have item response rates and all that. Obviously, some of the poll worker questions. People don't always have information on poll worker ages or that sort of thing. We knew that going in. The UOCAVA data because of the statutory pressures and the scrutiny that that's going to get and the voting machines, you know. The voting technology is so hard to ask about because of the way locals use these machines and the way it's actually administered and the exceptions and all that. It's hard

to do that. But I don't think that -- aside from some of the poll worker questions, I think we're going to have pretty good coverage. I don't think there's anything that people are not tracking. And I think a few years ago there was a much greater degree of just lack of that tracking and data collecting.

MS. LYNN-DYSON:

Kind of related to that, Toby and I just this afternoon were having a conversation this is so much of a work in progress. And I just really enjoy getting updates on what he's seeing and as he's working with the points of contact in the field. And this really relates to the notion of tweaking the instrument. We were talking about how absentee votes are recorded and collected and kind of unbeknownst to us that you take, for instance the State of Maine collects its absentee ballot recording by precinct, and that really isn't taken into account in the way the survey is presented this year.

So work in progress, learning more with each iteration about how you all actually administer the elections and, therefore, how you actually collect these data.

Yes?

MR. SILRUM:

Jim Silrum from Norh Dakota. I'd like to invite you in to seeing the resolution that was passed today here as a gift and not a curse. A gift in that tweak? Yes, go ahead and tweak. But when you're saying, "Oh, let's add a new data element," or "Let's do that," you can do that but you can do that for the 2012 survey. And then now you can be saying, "Okay, we'll go through the 120-day comment period but we know that that's not impacting those people

who are going to have to collect that data and getting their systems ready to collect that data." So I strongly encourage you to see that as a gift from us and not a curse or a limitation from us. There's always two ways to look at a thing.

MS. LYNN-DYSON:

Kind of like all the bad Christmas presents my husband gave me? That's why he doesn't ever buy me jewelry anymore and why my ex-husband is still complaining about those cufflinks that I gave him 20 years ago. What was I thinking when I gave him engraved cufflinks? Never seen him wear a cufflink before or since.

MR. SILRUM:

Karen if we gave you a good gift, we'd probably be in trouble with ethics laws.

MS. LYNN-DYSON:

Yes, Sarah?

MS. JOHNSON:

I do have one quick question that I didn't get to ask at NASED because had a really brief kind of time to talk about the Election Day survey. When we got the survey, the final survey document, you know, as you're reading through there -- and I really understand because of the Paperwork Reduction Act it only looks like 20 questions, but when you do the As, Bs, Cs, Ds, Zs and GGs of half of these it ends up being, you know, 200 questions or something. So you're reading through it and at the very end -- by the time you get to the end you're like, "Wow." Then in the fine print at the bottom, you know, you read through the fine print and it says, "Estimated time to complete this survey 88 hours." So one

question I have after I got over the heart attack of 88 hours was how do you all actually define -- what did you use to come up with 88 hours? And I will tell you that we're doing a survey right now within NASED asking our members exactly how many hours did it take you to do the Statutory Overview which was new, you know, which took all of us a lot of time to do which now -- you were saying Moritz Law School -- they've got Westlaw and they can search just like a lot of us could, adding that with the Election Day survey. And it looks like we've got about 20 states reporting and from the really small state it was 16 hours, you know, to a medium state to a large state it goes all the way up to over 700 hours for, you know, one survey. So I know Toby you mentioned the pressure that this puts on states and locals but, you know, in reality when everyone is talking about it and you get researchers and advocacy groups, I wish people would take into account real life and how many hours it takes to get all that data.

MS. LYNN-DYSON:

Not to be counted and even hundreds, probably thousands, yes. Yes, and certainly my sincere hope is that as we go on with this, as the iterations go on it just -- I love this idea of this 1040, you know. I mean it's just -- to me it's like in a perfect world we'd have a Turbo Tax kind of situation, and maybe that would be of great benefit and great help. But I certainly well recognize that 88 hours you need to put four zeros behind it.

DR. MOORE:

Getting back to Jim's point is that it would be good to at least take the time for 2010 to look at it and try to whittle it down some

instead of just repeating it wholeheartedly because if we can take some time and look at, you know, the dirty words that Sarah is going to put in the comments like, “Why are you asking this,” and then we can look at some of the data that doesn’t vary much or that maybe we can do without, it would be good at least to have that time to try to look at it in terms of what questions could we omit. For instance the poll worker questions, there’s no reason to ask those repeatedly. So we might be able to drop out some of those if we got good data this time. So hopefully, you know, the EAC won’t just repeat it wholesale in 2010; that it at least will take time to look at where we could lessen that burden and eliminate some of the data elements that we could.

MS. LYNN-DYSON:

To be responsive to Sarah’s question, unfortunately I don’t have an answer for you exactly on how those hours were arrived at. I know that the Deputy Research Director, Shelly Anderson, worked very closely with Laiza Otero who did it in ’06 on that. They’re kind of the Paperwork Reduction Act experts within the agency. However, Tamar just shared with me that the public is invited during that public comment period to talk about the burden that they think this is going to place on them in answering those questions. OMB does -- and I do happen to know that because I know we were -- there was a lot of time spent in August and September of this year working with our OMB officer on this burden analysis issue.

MS. JOHNSON:

How much of -- and I do realize that a lot of the UOCAVA stuff that causes us all angst is required. I mean I realize that in the NVRA portion. How much of the current Election Day survey is required? And how much discretionary as in poll worker age? It's not required...

MS. LYNN-DYSON:

Right.

MS. JOHNSON:

...in any given law...

MS. LYNN-DYSON:

Right.

MS. JOHNSON:

...anywhere in the world.

MS. LYNN-DYSON:

Right. I think it would be fair to say that 60 percent of this survey...

DR. MOORE:

I worked with Donald and other lawyers enough to know that I'm not going to touch that question.

MS. LYNN-DYSON:

...60 percent or so is required. Toby and I at the break were talking about the poll worker question being as good a one as any in terms of decreasing the size of the survey the next go-around. Those are the kinds of questions we don't need to keep asking year in and year out.

I heard loud and clear in terms of the resolution, don't add, feel free to take away. And I think that the poll worker and a

number of other questions like that should be more than eligible for removal, maybe not permanently. I mean we may want to, you know, take the temperature again at some point in the future on some of these, but don't have to ask some of these year in and year out.

Yes, Julie.

MS. FLYNN:

Julie Flynn from Maine. I apologize, I had to step out, so if someone else asked this I probably don't deserve to hear the answer.

With the Paperwork Reduction Act, if the Commission decides to go with our resolution and not make any additions to the survey, do you still have to go through that whole public comment process?

MS. LYNN-DYSON:

It is my understanding that you do. Toby and I were talking about this also at the break. I must admit to you I don't have a definitive answer on that. And I happen to know, having spent some previous lives in research and evaluation firms, that many federal agencies, of course, the Census and health and all, they are not subject to the Paperwork Reduction Act. So they have these surveys, they can come out year in and year out and they can tweak them, they can change them and they don't have to meet those requirements. Other surveys that I've worked on, the surveys have changed. So, in fact, they do have to go through that process.

I would think and hope that we have developed over the years a relationship with our desk officers at OMB who do the Paperwork Reduction Act and we would frankly just go to them and we would say, you know, “Here’s what the instrument was. Here’s what the instrument will be. Are we subject to the Paperwork Reduction Act?” And we’ll just have to see.

MR. SILRUM:

Karen, Jim Silrum, again from North Dakota. Just to be clear on something, those of us who are election officials really don’t have a desire to hide data. We don’t have that desire.

MS. LYNN-DYSON:

Uh-huh.

MR. SILRUM:

But I think we’re all aware in this room that there are oftentimes data elements that we collect that are not readily regurgitatable from our databases...

MS. LYNN-DYSON:

Uh-huh.

MR. SILRUM:

....and those meaningful reports have to be written by our vendors so that that data can be polled appropriately, or it’s buried simply at the county level only or at whatever jurisdiction does that sort of thing. And then when you take into account that North Dakota is the only state without any form of voter registration,...

MS. LYNN-DYSON:

Right, right.

MR. SILRUM:

...and Toby you and I spent quite a bit of time wrestling through those questions and saying, “Okay, on the one hand we could just tell you we’re not going to answer a single one of these questions because they don’t apply to us,” but we have been having a real challenge in making sure that we can report some of the things that we can report to you and yet have them understood by you without thinking of voter registration. Getting our heads wrapped around all of those answers and being prepared to answer those, it would be nice to know going into the next one that we’re going to be answering the same -- basically with the same concept in mind and not have to completely change our framework.

One of the things that I did in preparation for this survey was I made sure that each one of the counties could provide all of the over and undervotes for every office that was in our election and wonder to behold, you know, it’s not even required in this. And so we’re trying to second guess what’s going to be coming on there...

MS. LYNN-DYSON:

Sure, of course.

MR. SILRUM:

...and then we say, “Oh, okay, I guess I didn’t need to collect all that.”

MS. LYNN-DYSON:

Yes.

MR. SILRUM:

But then you ask another question and we didn’t even track that.

MS. LYNN-DYSON:

Gotcha.

MR. SILRUM:

And it make us look bad.

MS. LYNN-DYSON:

Yes. Yes.

MR. SILRUM:

It's not all about just making us look bad, but you do recognize that when we can't provide data it makes us look like we don't care about a certain thing,...

MS. LYNN-DYSON:

Uh-huh.

MR. SILRUM:

...or people reading the report say, "Gee, I wonder why North Dakota doesn't even take the time to do that sort of thing."

MS. LYNN-DYSON:

Uh-huh, uh-huh.

MR. SILRUM:

And...

MS. LYNN-DYSON:

I'd like to just pick up on that undervote/overvote comment. I think it is illustrative of what I struggle with the NASS/NASED meeting last month when Toby and I made a presentation. There was an interesting exchange that went on about undervotes and overvotes. And as someone who is a relative newcomer to this field now, five years into it -- I wish Tom Wilkey were sitting in the back. He'd go, "You're a baby" -- I was struck by -- I was sitting in the audience looking and there was a group in the back to my left

that was sitting there shaking their heads, this was the undervote/overvote conversation, essentially saying, “I don’t collect that. I can’t collect that. I’m not going to collect that.” And I turned to my right and on the right side of the room were people nodding, “Yes. Yeah, we collect it. Everybody collects it. What do you mean you can’t collect it? Everybody can collect it.” So I’m sitting here, you know, at 1440 New York Avenue, “What am I supposed to surmise from that?” Half the audience says “yea” and the other half says “nay.” And there’s the, you know, back and forth tug, “We need to know. We need to know undervotes and overvotes.” “Well, good luck because I can’t collect it.” “Well, I can.” And that’s what I struggle with a lot.

One of the things I want to mention as well, it’s kind of an ovation to the folks in the field who do this one, Kim Brace and I in that December/January period of ’07 were having those 20 hours worth of conference calls, which I think Sarah you actually participated, John participated. I was just so struck by the goodwill, and I really mean this, of people out there. I mean I realize that that was not the world’s best instrument that your Federal Government, your EAC provided you in 2006. And when I listen to people the hours that they spent trying to enter data into that Web base survey and still seemingly, you know, had a happy face on and were trying to accommodate, I think it’s testimony as much as anything to the elections field, too. I mean, we’re just kind of these workers for democracy and we’re doing the best we can. But I can’t believe people just didn’t, you know, throw up their hands and, you know, voodoo doll the EAC and whatever because it just -- people would

tell me, you know, their clerks were sitting here spending hours on this thing and they went to press the "send" button and it wouldn't take and they had to start all over again. I mean it was just nutty. So, you know, I would just certainly say, "Thank you, thank you." And I know Toby tells me all the time about how the feedback he's getting is oh so much better; way, way better this time. So...

Yes?

MR. HARRISON:

Allen Harrison, Arlington County, Virginia. I've listened to this with great interest, but I have a question that I think is beyond the collection and maybe you can enlighten me. What in your judgment are the perceived major uses and benefits from the survey and report for the election community? We spend a lot of time collecting it, but what's the uses and benefits, the major ones, going through all of this?

DR. MOORE:

Well, I think it is becoming recognized by both researchers and policymakers as the central source for information on how Americans cast their votes. So if you want to do a change in policy, and there are lots of ideas running around Washington now on how to improve voting for UOCAVA, I'll just give you an example for overseas voters, there are people who are waiting for this data before they make their policy recommendations because this is the official best central source of data. There's lots of talk about changing the way we do registration in the United States where there are people waiting for the Election Day survey/registration data so they can get some sense of how that's going to work. So I

think it's policymakers but also the advocacy and research community that's looking for these numbers. But I think it's something that's still growing; it's still becoming more public awareness of the availability of the data and the uses of it as we go along.

And the grants program, the precinct level data from these five states, is something that people are really looking forward to as well because for the first time we'll be able to look below the county and see how different communities within the same county have different experiences at the voting booth. For example with rejection of provisional ballots, I had a lawyer who called me yesterday very interested in getting those numbers so they can look below the county level and see if there's variation in the rates at which provisional ballots are rejected. But it is something that I think is still growing as people become aware of it.

MS. LYNN-DYSON:

I would also like to highlight, a bit tangential to that but I think still on point, with the Statutory Overview. This document and the information contained in it I see as being an enormous teaching tool for the media. I know that, you know, as the fed's communication director who is down the hall from me, I listen to them every day struggling with these queries from the media; the media of course wanting a soundbites and how they describe the business of what we do and, you know, what the provisional voting rates were and what was going on with absentee balloting. I think to the extent that the EAC can through the Statutory Overview and through an educational outreach effort inform them about the

nuances, the enormous differences that exist among you all, that folks who are interested and responsible journalists will take that into account and will do something with that, and will not maybe be so quick to take a soundbite and run with it; understanding that you can't really compare apples and oranges and that you need to try and find a way to explain that to the public.

MR. HARRISON:

Then may I ask this question? At the local level what do you see as the major uses and benefits for a local election board and registrar in this? Is it something they can compare what they're doing? Or how do you...

MS. LYNN-DYSON:

I'll tell you...

MR. HARRISON:

What's the utility?

MS. LYNN-DYSON:

Well, I'll tell you I have this goal with this in terms of, you know, just for lack of better phraseology the ROI, the return on investment, that I'm hoping we will get to the point with this survey and the folks like you, the locals understanding, "What's in it for me? What's the value added for me sitting here spending 8800 hours collecting this information?" I think...

MR. HARRISON:

That's the point. I think we're putting in an awful lot, but I'm not sure what we're getting back.

MS. LYNN-DYSON:

Well, what I think -- and I have this suspicion having done that ROI kind of work in some other fields -- I think that it will come down to money. I think that if we can begin to show and make a case to the locals of how these data can have a direct impact on what you're able to go to your city council and ask for in terms of needed resources that, you know, if nothing else, "This is the cost of doing democracy," if you will. "We're not doing research at the moment on how much it costs to run elections." But they will see.

And there are some very good and some very interesting cases in that regard. In Louisiana for instance, being told that as a result of what the UOCAVA numbers showed or didn't show for the State of Louisiana that Legislature saw fit, I was told, to put more resources into trying to ensure that UOCAVA voters got their ballots. So, you know, money always talks and so hopefully some of this information trickles, you know, very precisely down into that. Here's the data, you collect it, it could mean more money for you to do your work.

MR. HARRISON:

If I may just follow-up. We have a very direct way of dealing with our board for money locally. This is locally. I think the others is a state level. We say, "Guess who's going to be charged with the long lines on Election Day if you don't give us the money to buy more machines and get more staff and we're going to go over our budget? You're going to have that at your door. We will see that that's where it will arrive." And that's pretty powerful, as long as they have funds to do it. A lot of jurisdictions do not have the funds

that they can do it, they have other pressing needs in Virginia. We are blessed in Arlington. They tax us enough, believe me.

Thank you.

MR. WEIR:

Steve Weir. If I could just give you my opinion, I think that registrars should own their own data. I think that we should embrace collecting data, I think we should understand the significance the data has for us ourselves as a metric that we can use to compare election to election and I think that we're simply asking to bring this to a higher level. And I'm not necessarily trying to compare my county to another county, but when I collect data if it means something to me I can say, "Look, why am I rejecting so many vote-by-mail ballots that are coming from overseas or coming from a new area that I can design programs to try and correct that?" And I've been doing it for about 18 --16 years now. And the serendipity that you discover in trying to improve your own operation and thus owning your data makes the data in and of itself a value to you. I think that the nation is trying to move in that direction. Once we as registrars can answer Alan's question, "What does it mean to us when we start getting that feeling," we're going to embrace this.

MS. LYNN-DYSON:

Yes, Sue?

MS. McRILL:

Sue McRill, Michigan. Can you tell me how many states have not yet submitted their completed surveys?

MS. LYNN-DYSON:

We're getting close to it. We have ten or less.

MS. McRILL:

Thank you.

MR. PALMER:

Don Palmer, Florida. Regarding your comments about the over and under report, Florida collects that information. But, you know, from a statewide level you have small, medium, large counties, different vendors, voter registration databases on a county level.

MS. LYNN-DYSON:

Uh-huh.

MR. PALMER:

It's apparent that some are easily extractable, they can extract the information.

MS. LYNN-DYSON:

Uh-huh.

MR. PALMER:

Some vendors can't even think about it or didn't prepare for it.

MS. LYNN-DYSON:

Yes.

MR. PALMER:

That being said I think that five states that received the grants, hopefully there's some good information on there on what sort of planning is necessary to not only go to precinct level but just to be prepared for the survey and what modifications can be done

in it with your vendor. I'm hoping that that's user friendly for the states.

The only other thing before you comment is during the grant process, as I dug into the weeds of that and tried to submit our application, it was difficult, and this is my perspective, it was difficult to come up with a $2 million program.

MS. LYNN-DYSON:

Uh-huh.

MR. PALMER:

I think it was a great idea. I'm not sure who wrote the appropriation, but it is what it is. But I think in the future if there's ever $10 million, I could very easily come up with a program of $500,000 that would have greatly enhanced the ability...

MS. LYNN-DYSON:

Right.

MR. PALMER:

...of the local jurisdictions to comply.

MS. LYNN-DYSON:

Right.

MR. PALMER:

Another $10 million that's spread out amongst more states I think would greatly enhance the overall efficiency of the survey.

MS. LYNN-DYSON:

Yes. Yes, there's no question that in that very brief timeframe, I think it was only two months, we had to basically run -- advertise for folks to submit their grants and for us to push those grants out the door was two months. And I probably had at least

three or four states' point of contact just contact me and said, "I don't need $2 million. I probably would apply but, heck, I'd be happy if you gave me $250,000 and I could do some good things with that."

Also when we were constructing -- in those hectic two months when we were putting together that grant program and the criteria that we used to select the states, I'm pleased to say there's a very nice mix. While there's not a geographic mix, because we kind of go through the swath of the middle of the country -- not by design, just by accident -- there is a very good mix of top-down and bottom-up voter registration database systems; that is, you know, those VR data systems that are administered at the state level and they trickle down or, conversely the locals feed their data up to the state. There's also a good mix of state-run VR database systems, vendor run systems. And there's one state, I can't remember which offhand, who has a combination. Actually has a couple of vendors who are running the database systems, a combination of state-run and vendor run. So there should be I hope in the mix enough there in terms of best practices for everyone to be able to take a look at.

John?

MR. LINDBACK:

Is there somebody that's writing a report on how they're spending all that money and what sort of worked and what didn't and all that?

MS. LYNN-DYSON:

Yes, that is ICF International, the independent evaluator who, as I mentioned, is as we speak in the field or about to go into

the field and do that. They are writing that report. That report is due to the EAC in late April and we will begin our vetting process, which includes the Board of Advisors. So that report will be fully reviewed and commented on and tweaked. And that's exactly what they're looking at; what worked, what didn't work, you know, how did you use the money, if you had to do it over again, et cetera.

Julie, you had a...

MS. FLYNN:

And I apologize if this was mentioned in the presentation when I stepped out. Julie Flynn from Maine.

What timeframe are we looking at to get the data back to review? Because you're taking it from the spreadsheets putting it in your own tool. How long are we going to have to review it so we can start -- I want to make sure I set aside time.

DR. MOORE:

We hope to be able in the middle of March to get that back to you in report form and then we'll give you the time you need to go through it, but hopefully starting in the middle of March.

MS. FLYNN:

And a follow-up, if I may. What will be the ultimate? It's going to go in a report to Congress. But is there any thought of having those available in soft copy format or somehow attached to the EAC Web site? I don't know if it's possible because of the size because...

MS. LYNN-DYSON:

No, absolutely. Absolutely. I think, you know, to the point that Toby made earlier about this becoming what I've been talking

about four years year, and we're getting closer, this language that I use about this being the gold standard in terms of election data, it's surprising how many policymakers, you know, staffers, state level Capitol Hill staffers are looking to this data, academics. And they go directly to the Web site and they pull those data sets down. So all of that information will most certainly be available on EAC's Web site in the fall so that people can analyze and manipulate the data as they may so choose.

Just to end, my email address I'm klynndyson@eac.gov. Dr. Shelly Anderson is the Deputy Research Director and Shelly is the individual responsible for the day-to-day work and answering the questions, and she is sanderson@eac.gov. And I make a point -- my policy is that we get a response back to anyone and everyone within 24 hours. So if I don't have an immediate answer I will certainly within 24 hours let you know I don't have an immediate answer but that I'm on the case and will get an answer back to you as quickly as I can.

And thanks again everyone for participating in this. Eventually Alan you will see, I hope, the value to this work.

[Applause]

CHAIR BARTHOLOMEW:

At this time on behalf of the Executive Board and on behalf of the whole entire Standards Board, I'd like to take the opportunity to thank Commissioner Beach, Sharmili Edwards, Emily Jones, Matt Masterson and the rest of the EAC staff for assisting us with this meeting with their guidance and support. And I wish you all safe travels.

There being no further business to come before us on this agenda, this meeting is hereby adjourned.

[Applause]

MR. RAGSDALE:

Before everyone leaves, just a second. I'd also like to express my personal thanks to one individual here that I think has run an absolutely outstanding meeting for the last two days and that's Tonni Bartholomew.

[Applause]

MR. RAGSDALE:

Thank you.

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[The meeting of the U.S. Elections Assistance Commission Standards Board adjourned at 4:34 p.m. EDT]