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U.S. ELECTION ASSISTANCE COMMISSION
PUBLIC MEETING

Taken at 1225 NEW YORK AVENUE
NORTHWEST, SUITE 1100
WASHINGTON, D.C. 20037

Taken on the date of:
TUESDAY, MARCH 22, 2005

21 Start time: 10:00 o'clock, a.m.
22 Taken by: JACKIE SMITH, a Court Reporter

1 U.S. ELECTION ASSISTANCE COMMISSION:

2 Gracia Hillman, Chairman

3 Paul DeGregorio, Vice-chair

4 DeForest Soaries, Commissioner

5 Ray Martinez III, Commissioner

6 Juliet Thompson, General Counsel

7 Carol Pacquette, Interim Director

8 SPEAKERS:

9 Peggy Sims, Research Specialist, EAC

10 Mark Skall, National Institute of Standards

11 & Technology

12 Kim Brace, President, Election Data

13 Services

14 Honorable Pedro Cortes,

15 Secretary of the Commonwealth, Pennsylvania

16 Tony Sirvello III, Executive Director,

17 IACREOT

18 Edward A. Hailes, Jr, Senior Attorney,

19 Advancement Project

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1 P-R-O-C-E-E-D-I-N-G-S

2 CHAIR HILLMAN: Good morning. This

3 meeting of the United States Election Assistance

4 Commission will come to order.

5 If you would all please stand and join me

6 in, "The Pledge of Allegiance."

7 (The Pledge of Allegiance.)

8 CHAIR HILLMAN: We would have the

9 roll call, please.

10 ADMINISTRATIVE STAFF: As I call your

11 name, please respond by saying, "here."

12 Commissioner Soaries?

13 COMMISSIONER SOARIES: Here.

14 ADMINISTRATIVE STAFF: Commissioner

15 Martinez?

16 COMMISSIONER MARTINEZ: Here.

17 ADMINISTRATIVE STAFF: Commissioner

18 DeGregorio?

19 COMMISSIONER DEGREGORIO: Here.

20 ADMINISTRATIVE STAFF: All here. All

21 present, Ma'am Chair.

22 CHAIR HILLMAN: Good morning,

4

1 everybody. If I could remind you, please, to

2 turn off your cell phones, pagers, other

3 electronic devices that might distract from the

4 meeting, it is appreciated. Thank you.

5 Okay. We have before us the agenda for

6 today's meeting, and if everything's okay, it

7 would be appropriate to adopt the agenda.

8 COMMISSIONER SOARIES: So move.

9 COMMISSIONER MARTINEZ: Second.

10 CHAIR HILLMAN: Okay. We have a

11 motion to approve the agenda. All in favor.

12 Good. Minutes from the February 23rd

13 meeting when we were in Columbus, Ohio, any

14 corrections to the minutes? If not, it would be

15 appropriate for a motion to approve.

16 COMMISSIONER MARTINEZ: Move to

17 adopt, Madam Chair.

18 VICE-CHAIRMAN DEGREGORIO: Second.

19 CHAIR HILLMAN: All in favor. Thank

20 you.

21 Okay. We will move now directly into

22 reports that will be given this morning. The

5

1 first report is on Title II requirements

2 payments update. Peggy Sims, research

3 specialist.

4 MS. SIMS: Good morning. I am

5 pleased to report that in the month since our

6 last report, we have processed over 13 million

7 dollars more in HAVA requirements payments to

8 three states, and that comprises almost 1.7

9 million from funds appropriated in fiscal year

10 '03, and more than 11.8 million in funds

11 appropriated in FY '04.

12 This brings total requirements payments
13 processed by EAC to more than 1.7 billion
14 dollars, to 51 states. And by states, I include
15 the eligible territories. That is of the more
16 than 2.3 billion appropriated for this purpose
17 in 2003, 2004.

18 All 51 of these states have received their
19 2003 requirements payments, and those total
20 almost 766 million. Forty-one of these states
21 have also received their payments for FY 2004
22 appropriations, and those total over 952

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1 million.

2 The latest disbursements leave us just over
3 601 million to be distributed from FY '03 and
4 '04 funds, which means my future reports are
5 likely to be brief. Only four states have not
6 received any requirements payments. They are:
7 Alaska, Guam, South Dakota, and New York.
8 Together, they comprise almost 179 million in
9 outstanding requirements payments.

10 Certifications from two of those states are
11 pending. Those are Guam and South Dakota.
12 South Dakota is awaiting the conclusion of a
13 30-day Federal Register publication period for

14 its 2004 state plan, and the 38th day is April
15 9th, so we can proceed after that. Guam needs
16 to fulfill its HAVA compliant, administrative
17 complaint procedures with the EAC, which is a
18 prerequisite to receiving requirements payment.
19 Two other states have not yet filed
20 certification for any requirements payments.
21 They are Alaska and New York. Alaska recently
22 submitted a revised state plan to the EAC which

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1 has a revised budget. Once EAC has published
2 this plan in the Federal Register for 30 days,
3 the state did submit certification for
4 requirements payment. Alaska plans to certify
5 for its FY '03 funds first, and the FY '04
6 later, when the state has appropriated its five
7 percent match for those funds.

8 New York notified EAC last week that its
9 state legislature is trying to take the steps
10 necessary for the state to qualify for its
11 requirements payments, namely, appropriating the
12 five percent match and developing the
13 administrative complaint procedures that are
14 requisites to receiving those funds.

15 A certification for Michigan for a partial
16 2004 requirements payment is pending, and

17 requires follow-up to insure the state recovers
18 payments for the five percent match.

19 Two other states, Delaware and Montana,
20 cannot certify for their 2004 requirements
21 payments until after they submitted a plan that
22 covers the use of those funds, and EAC has

8

1 published the plan in the Federal Register for
2 30 days.

3 The remaining outstanding balance
4 represents the 2004 requirements payments, for
5 which seven states have not yet certified.
6 Those seven states are: California, Hawaii,
7 Maine, New Jersey, North Dakota, Oregon, and
8 Texas.

9 Main and New Jersey have notified United
10 States that they are likely to submit
11 certifications for their '04 requirements
12 payment within the next week or two.

13 Texas is awaiting the conclusion of the
14 30-day Federal Register publication period for
15 its 2004 state plan before submitting the
16 certification for any of its FY '04 requirements
17 payments. Once again, that is after April 9th,
18 we can proceed. They can submit verification,
19 and we can proceed.

20 Hawaii, North Dakota, Oregon are seeking
21 required five percent match from their
22 legislatures. And there are indications that

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1 California may approach EAC about its FY '04
2 requirements payments when the new Secretary of
3 State has been confirmed and installed.

4 This concludes my report. Are there any
5 questions?

6 CHAIR HILLMAN: Commissioner.

7 VICE CHAIRMAN DEGREGORIO: Peggy, how
8 many states have received '03 and '04 money?

9 MS. SIMS: Fifty-one states have
10 received '03, and 41 have received '04.

11 CHAIR HILLMAN: Commissioner
12 Martinez, questions?

13 COMMISSIONER MARTINEZ: No questions.

14 COMMISSIONER SOARIES: I think you
15 have disappointed Vice-Chairman DeGregorio. He
16 was prepared to go to Guam to see what was going
17 on. There is some motion coming from Guam.

18 CHAIR HILLMAN: I do have a question
19 for you. On the four states that had not yet
20 received their payments for '03, '04, Alaska,
21 Guam, South Dakota, New York, for the
22 certifications pending for Guam and South Dakota

1 and the paperwork submitted by Alaska, is that
2 for both '03 and '04?

3 MS. SIMS: Well, South Dakota and
4 Guam have submitted certifications for '03 and
5 '04. They are pending.

6 Alaska is going to submit its '03
7 certification once that federal state plan had
8 been published for 30 days. They do not have
9 their five percent match for FY '04 funds. My
10 understanding is, their new fiscal year starts
11 July 1st, so they are seeking appropriations for
12 the five percent match after that date.

13 CHAIR HILLMAN: Okay. Thank you. If
14 there are no others questions, we thank you,
15 very much, Ms. Sims.

16 If we could please have Mark Skall, from
17 the National Institute of Standards and
18 Technology. And we're going to have a Power
19 Point, so I guess Vice-Chair, unless we want to
20 become a part of his Power Point presentation.

21 MR. SKALL: We're just waiting for
22 the projector, counting down, so maybe it's

1 doing something.

2 Good morning. I'd like to thank the
3 Commissioners for inviting me to give this
4 update on the very important work that we're
5 doing.

6 So NIST has quite a few responsibilities,
7 as outlined in the Help America Vote Act, or
8 HAVA, two of them with respect to the technical
9 guidelines development committee that is charged
10 under HAVA with providing recommendations to the
11 EAC for voluntary voting system guidelines.

12 The NIST director chairs the TGDC, and NIST
13 provides technical support to the TGDC in the
14 development of the voluntary voting system
15 guidelines, including security methods to detect
16 and prevent fraud, human factors, including
17 technology for individuals with disabilities,
18 and many other things as well.

19 Since the first meeting of the TGDC, NIST
20 and the TGDC have been very engaged in working
21 and developing these voluntary voting system
22 guidelines.

12

1 In July, 2004, NIST chaired the first
2 plenary session of TGDC. Work plan was adopted.
3 September of 2004, we conducted TGDC public
4 hearings to gather data and information on human

5 factors, privacy, computer security,
6 transparency, core requirements, and testing.
7 October of 2004, we posted voting software
8 hashes for use by states. These hashes are
9 part of our National Software Reference Library.
10 What this does is to allow states to determine
11 whether, in fact, the software that they have
12 purchased and has been delivered to them is the
13 same as the software that's been tested.
14 And the way this is done is, we have a
15 reference library of hashes which are unique
16 fingerprints for all software. What we do is
17 provide hashes for software after its been
18 tested. Then, when the states get the software,
19 they can create hashes, compare the hashes, and
20 if, in fact, they do compare identically, they
21 know that the software has not been identified.
22 October through December of 2004, we

13

1 conducted 17 TGDC subcommittee teleconferences.
2 January, 2005, we held a second plenary
3 session of TGDC, where 31 resolutions were
4 adopted, defining this NIST's technical guidance
5 tasks.
6 From February to March time frame, we're
7 completing the technical guidance for the most

8 critical tasks of TGDC's resolutions, and
9 develop voluntary voting system guidelines for
10 the 2006 election.

11 March, 2005, we held a third plenary
12 session of the TGDC where the TGDC provided
13 feedback and endorsement of the NIST draft work
14 products. There was also one resolution adopted
15 there.

16 April, 2005, we're going to have the
17 initial TGDC recommendations for voting system
18 guidelines, and forward that to the EAC.

19 August Of 2005, we're going to complete the
20 second round of technical guidance tasks in the
21 TGDC resolutions.

22 And November 2005, complete the third now,

14

1 the TGDC resolution in July, established three
2 subcommittees to gather and analyze information.
3 They are security, and transparency human
4 factors, and privacy, and core requirements, and
5 testing.

6 These subcommittees meet at least every two
7 weeks via teleconference. This NIST voting team
8 participates in these teleconferences, and the
9 public is provided access as well.

10 NIST and subcommittee members meet,

11 occasionally, face to face, but the majority of
12 the work is done in teleconferences, and the
13 research is done, typically, in between
14 subcommittee meetings. After a subcommittee
15 meeting, we will try to document the action
16 items. If there are no action items that come
17 out of the subcommittee meeting, then this team
18 will get together to decide what action items we
19 need to prepare for the next teleconference.

20 The results are submitted at the TGDC
21 plenaries. Plenaries are held to discuss
22 issues, review work products, and achieve

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1 consensus.

2 Resolutions are adopted at these meetings.

3 And, again, 31 resolutions were adopted at the
4 January, TGDC plenary.

5 At the March, TGDC meeting, we provided 22
6 separate draft work products that responded to
7 the resolutions in January. And, again, an
8 additional resolution was adopted as well in the
9 March plenary.

10 The initial recommendations for the
11 voluntary voting system guidelines will be
12 produced for the April, 2005, TGDC meeting. I
13 believe that is April 20th and 21st, at NIST.

14 Now, we have a lot of resolutions assigning
15 work to NIST, and we have produced quite a few
16 work products. Before we could actually
17 organize these work products, we really needed
18 to develop, we felt, an implementation strategy.
19 That strategy was governed by the two somewhat
20 conflicting goals.

21 The first goal is really to develop the
22 best long-term guideline possible. We had a lot

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1 of experience at NIST in developing standards
2 and guidelines. We think we know how to do
3 these in the best way. And, clearly, for the
4 country, we want the best, long-term guideline
5 possible.

6 In order to do this, we certainly want to
7 build on the strengths of existing standards,
8 particularly the 2002 VSS, but we also need to
9 change areas in that standard that need
10 improvement. And the resolutions point to many
11 areas where we're asked to look at things that
12 may need some sort of substantive change, things
13 like the software coding standards, quality
14 management standards.

15 We need to look at every requirement to see
16 if it is specified precisely, and if not,

17 rewrite it. Additionally, I think, to get the
18 best possible guideline, we need to reorganize
19 requirements in a more logical way. The
20 second goal that is driving us is the very near
21 time goal that we know the states need to
22 conduct the 2006 election. Clearly, we want to

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1 provide as much help as possible. In a way,
2 this implies the need to minimize changes in the
3 2002 VSS because we're aware of the fact states
4 are working with systems that have already been
5 qualified.

6 In the changes though, those would,
7 obviously, cause traumatic effects on the 2006
8 election cycles. The states, we believe, also
9 need help in filling in the gaps, things that
10 the 2002 VSS does not address, so we have come
11 up with what we believe is really a pretty
12 unique strategy to develop two divided lines:
13 The first, what we call an augmented 2002 VSS
14 for April, and the second, a new, redesigned
15 voting system guideline which will be completed
16 in November.

17 The augmented 2002 VSS improves the 2002
18 VSS by filling in gaps, accessibility and
19 usability. If the states are implementing ones,

20 these are ways you should do them. There needs
21 to be guidance on how to do wireless, and other
22 security issues.

18

1 Clearly, we want to correct existing errors
2 in the 2002 VSS, and we want to address issues
3 facing the states, such as trying to insure that
4 the installed voting system software is the same
5 as the software that's been tested.

6 So we also were asked by the TGDC to
7 prioritize solutions. Now that we have an
8 implementation strategy, we can use that to
9 determine our priorities. We have come up with
10 three groups of priorities, based on
11 resolutions.

12 Group 1 targets highest priority
13 resolutions. These resolutions augment and
14 correct the 2002 VSS, and guidance. And
15 requirements based on these resolutions will be
16 produced in April.

17 Group 2 targets second highest priority
18 resolutions. These develop a new guide to build
19 upon the 2002 VSS, but change substantially many
20 areas; security, human factors, and revision and
21 test ability of requirements. We plan on having
22 initial work products for these in April, and

1 completed in November.

2 Group 3 targets the remainder of the
3 resolutions, the lowest priority resolutions,
4 but important nonetheless. They will not be
5 addressed until after April, and then they will
6 be completed in November.

7 So, just spending a little time on Group 1,
8 which is probably one of the most interest to
9 everybody right now, there's six main areas.
10 The first are requirements for voter-verified,
11 paper audit trail. And for those of you who
12 haven't memorized the resolutions, I have given
13 the resolutions that this work refers to.

14 Accessibility and usability requirements
15 based on current technology, software
16 distribution set up, which is very important in
17 trying to insure that the software gets set up
18 in a way to minimize disruptions of the guidance
19 or the unit of the wireless technology.

20 We're going to develop a conformance
21 clause, which is confusing, because you read
22 requirements and you don't necessarily know who

1 the requirements pertain to, and exactly what

2 has to be done to conform to that particular

3 standard.

4 We're revising the glossary, and it is

5 actually going to be an on-line glossary,

6 accessible to everybody.

7 Group 2, I won't go through these in

8 detail, but just to point out that one of the

9 resolutions talks about analyzing the 2002 VSS

10 in detail, to determine which requirements are

11 not well written and needs to be written better,

12 and more precise and testable.

13 Analysis, looking at the larger picture of

14 how you do voter audits, of which paper audit

15 trails are just one method of many other

16 methods. Test strategies are very, very

17 important in this group. We're going to analyze

18 the federal standards that we have developed for

19 federal agencies with respect to security, and

20 see how those pertain to voting systems.

21 And this is the third, the third group of

22 standards, are the lowest priority one.

21

1 In summary, I'd just like to say that we

2 believe we have made tremendous progress in

3 development of the work products, working with

4 the TGDC.

5 Again, for consideration at the March 9th,
6 TGDC meeting, we have prepared 22 separate
7 preliminary reports. The feedback from the
8 March plenary was that NIST should continue to
9 develop technical reports and work-related work
10 products consistent with those preliminary
11 reports. We continue to be on target to produce
12 the initial set of recommendations for the April
13 meeting.

14 And the initial set of recommendations will
15 consist of the completed, augmented 2002 VSS.
16 And the name we finally agreed upon, and that
17 is, of course, subject to change, will be the
18 Voluntary Voting System Guidelines, Version 1.

19 So, thank you for this opportunity, and I
20 welcome questions.

21 CHAIR HILLMAN: Thank you, very much,
22 Mr. Skall.

22

1 Before we get into questions, could I ask
2 that you just, for the record, remind us of the
3 website that people can visit to get more
4 details about NIST and the TGDC.

5 MR. SKALL: Vote@nist.gov. V-O-T-E
6 at N-I-S-T, dot, G-O-V.

7 CHAIR HILLMAN: Thank you, very much.

8 Yes, sir. We have a few minutes. Commissioner

9 Martinez.

10 COMMISSIONER MARTINEZ: Thanks for

11 coming. Thanks for your presentation. Good to

12 see you again.

13 I want to start, I will ask a couple of

14 brief questions.

15 CHAIR HILLMAN: A few to two, that's

16 good.

17 COMMISSIONER MARTINEZ: I caught

18 myself, Madam Chair.

19 To drive home the point, you all are doing

20 work at the direction of the TGDC group, in

21 other words, all of your work product is driven

22 by resolutions that were at some point in the

23

1 last six to eight months adopted by the

2 Technical Guidelines Development Committee,

3 which is a board that is created via statute,

4 which is in the Help America Vote Act, correct?

5 MR. SKALL: Correct.

6 COMMISSIONER MARTINEZ: And the work

7 that you are doing is not a requirement, but a

8 response to the states that have moved out on

9 this issue, and in some way, either via

10 administrative director or legislative mandate,

11 have decided that voter-verified, paper audit

12 trail is what is best for their jurisdiction.

13 So NIST and TGDC is responding to that by

14 putting a set of objective, repeatable test

15 requirements for states that want to use

16 voter-verified, paper audit trail?

17 MR. SKALL: That is absolutely

18 correct, and we will introduce that as well in

19 April. These are in no way taking the position

20 on whether voter-verified, paper audit trails

21 are the way to go or not.

22 They are saying if, in fact, you are going

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1 that way because of state legislation, whatever

2 reasons, this is how to do it to obtain the best

3 possible result.

4 COMMISSIONER MARTINEZ: And the final

5 question I have is, if we describe security as

6 consisting of both software integrity and

7 procedural matters, in other words, access to

8 the voting systems, certification of the voting

9 systems, the initial work product that will be

10 delivered by NIST for consideration in April

11 will touch upon both aspects of those. In other

12 words, the software reference library touches

13 upon integrity of software, and the set-up, and

14 validation procedures, not to mention HDPAs, as
15 it touches upon software integrity or procedural
16 security.

17 MR. SKALL: Thank you for bringing
18 that up.

19 Yes, I would absolutely agree, and that is
20 a very important point I would like to
21 reemphasize.

22 The previous standards really only talked

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1 about requirements for voting systems, and
2 requirements for testing laboratories, or
3 testing entities.

4 This goes beyond that, talks about that,
5 but also talks about requirements, procedural
6 requirements for voting officials, as well as
7 issues like the software reference library and
8 certification. So it is one-stop shopping, is
9 the way I would describe it.

10 COMMISSIONER MARTINEZ: Thank you.

11 CHAIR HILLMAN: Great.

12 Commissioner Soaries.

13 COMMISSIONER SOARIES: Picking up on
14 the dialogue there, I never interpreted Group 1
15 as being work that confines itself to the area
16 of security. It includes security, but it is

17 not related to security.

18 MR. SKALL: Right.

19 COMMISSIONER SOARIES: And I say

20 that, Commissioners, because I think on the one

21 hand, there is an implicit statement that one

22 could infer, simply by the adopt of guidelines

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1 for voter-verified, paper audit trail, and there

2 is an implicit assumption that one could infer

3 that it at least is embraced as legitimate

4 voting technology.

5 On the other hand, I think we do well to

6 reiterate your point, Commissioner Martinez, not

7 only because we're not regulatory, but also

8 because the issue is not only one of security

9 but one of audit ability.

10 And at some point, we'll want to clarify to

11 what extent we believe any technology enhances

12 security versus audit ability versus usability,

13 or the other high level categories. But as we

14 get close, the closer we get to embracing some

15 specifics, the more explicit we have to be in

16 terms of articulating the benefit that we

17 ascribe to a particular standard.

18 MR. SKALL: Thank you for those

19 remarks. We're very aware of the issue, and the

20 implications, and the perceptions when we write
21 this. In fact, we have had input from
22 Commissioners and other people. And what we're

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1 doing is looking very closely for the April
2 delivery, and trying to describe security in
3 general, talk about our threat model that we
4 have developed, how we're responding to the
5 threat model by the various things we're doing,
6 and discuss various ways just to put everything
7 in that context.

8 So, yes, thank you. It's kind of a tricky
9 line to walk, because we really do want to give
10 specific guidance for a real problem, while at
11 the same time, making sure that we're very, very
12 clear on policy, that we're not advocating that,
13 that there are many other ways, and we will try
14 to explain that in the narrative section.

15 COMMISSIONER SOARIES: And I only
16 raise that because in the media, and in many
17 conversations and forums, the issue of
18 electronic voter security has been reduced to
19 the single discussion of voter-verified paper
20 trail.

21 And, of course, we have not participated in
22 that, but what I would not want us to appear to

1 do is to have come to that conclusion ourselves,

2 when all of us know better than that.

3 MR. SKALL: Absolutely.

4 CHAIR HILLMAN: All set.

5 COMMISSIONER SOARIES: Thank you.

6 CHAIR HILLMAN: Mr. Vice-Chairman.

7 VICE-CHAIRMAN DEGREGORIO: Thank you,

8 Madam Chair, and thank you for reminding people

9 of the vote.nist.gov website, because I know

10 that, Mark, you have posed much of your work, if

11 not all of your work, on that website, and I

12 certainly want to commend you for the work that

13 you have done because it has been substantial,

14 and it has been difficult to deal with many of

15 these resolutions, all of which we want to be

16 priority no. 1, but the TGDC did its due

17 diligence to try to prioritize things for your

18 staff.

19 You are continuing to receive comments from

20 people. People can continue to comment on the

21 drafts that have been posted on the website.

22 For instance, the March 9th draft contains a lot

1 of detail, a lot of information, particularly on

2 the VVPAT issues, the wireless transmission

3 issue. There is some good information that

4 people can be instructed on and provided

5 information on. I assume you are still

6 receiving comments.

7 MR. SKALL: Actually, we're still

8 receiving comments, and soliciting comments from

9 various people.

10 And I want to remind Commissioners and the

11 public, clearly, we're not working in a vacuum,

12 that we try to meet with all people who have any

13 insight; state officials, technology experts, to

14 try to get as much information as possible. So

15 we welcome comments, we welcome ideas, and we're

16 willing to consider them all. They help us

17 through our work.

18 VICE-CHAIRMAN DEGREGORIO: Okay. I know

19 that the states and local election officials are

20 looking for this guidance. They are looking

21 forward to it. We have many Secretaries of

22 States sitting behind you in the room. We have

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1 Donnetta Davidson, who is on the TGDC, I know

2 has provided some reality check at times on that

3 committee. If I am a state official, and if I

4 am a local election official, looking past

5 April, as this Commission has its work to do
6 post April and a process that is mandated under
7 HAVA to vet the guidelines.

8 But do you believe that the states, the
9 information, the guidelines that provide the
10 initial set of recommendations, would be helpful
11 to the states that are right now looking to buy
12 equipment to meet the Title III, the new
13 requirements under HAVA?

14 MR. SKALL: Yes, absolutely.
15 Certainly, the work on accessibility and
16 usability, we believe, will be very helpful.
17 And everything we put in there, we put in there
18 specifically because we believe there are gaps
19 in the 2002 VSS, specifically, gaps of areas
20 that would be of interest and need for the
21 states to perform their work for 2006.

22 VICE-CHAIRMAN DEGREGORIO: Thank you.

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1 MR. SKALL: One thing, Commissioner
2 DeGregorio, I can't promise you a trip of Guam,
3 but we have many international committees that
4 we're involved in. You let me know, and I will
5 put your name down.

6 VICE-CHAIRMAN DEGREGORIO: Thank you.
7 I was at a meeting at the Carter Center last

8 Thursday in Atlanta, and there were folks there
9 from Central and South America, election
10 officials, and others. It is interesting that
11 they are following our work in this area.

12 Many countries of the world use electronic
13 technology; Brazil, Netherlands, Venezuela,
14 India, and many don't have the kind of
15 guidelines that we're putting forth, working on
16 here.

17 And I know that I have been told that
18 people are following the website and looking to
19 guidelines we're going to produce in America to
20 perhaps copy them in their countries in the use
21 of electronic technology, in particular. So I
22 think this is not work being done for our

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1 country, but it is going to have a worldwide
2 impact when it is all done.

3 MR. SKALL: That is fascinating.

4 VICE-CHAIRMAN DEGREGORIO: They use
5 electronic voting.

6 CHAIR HILLMAN: Okay. I have one
7 quick question for you. In the grouping of the
8 priorities under Group I, you talk about work
9 that augments and correct its 2002 VSS, VSS
10 being Voting System Standards. And we're now

11 using the terms guidelines, instead of

12 standards, is that correct?

13 MR. SKALL: Correct.

14 CHAIR HILLMAN: So what kinds of

15 corrections do we refer to?

16 MR. SKALL: There's a lot of trivial

17 corrections; typos, misspellings, statements

18 that don't parse. We were hoping to look at

19 more substantive corrections, such as looking

20 into the error rates and things that may, in

21 fact, need some changes. We don't think we'll

22 be able to get those. So they are mainly, from

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1 examining each of the requirements one by one,

2 we have just found errors that have been made.

3 They have been stated, so they are fairly

4 trivial, but important enough to correct, we

5 believe.

6 CHAIR HILLMAN: Okay. So we're not

7 talking about substantive?

8 MR. SKALL: No.

9 CHAIR HILLMAN: Any other questions?

10 COMMISSIONER SOARIES: At the risk of

11 having my hands smacked, was NIST involved, in

12 any way, in the creation or the adoption of the

13 1990 or 2002 Voting System Standards?

14 MR. SKALL: No, not in the adoption
15 of those standards, although we've done work in
16 reviewing some of that in the '90s, but we were
17 not involved in the creation or adoption of the
18 standards.

19 CHAIR HILLMAN: Okay. Thank you,
20 very much.

21 Okay. Our next report is on the EAC
22 Election Day Survey and analysis update by Kim

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1 Brace, who is President of Election Data
2 Services.

3 Election data services is working under
4 contract for EAC to do the analysis. Thank you.
5 Welcome.

6 MR. BRACE: Thank you, Madam Chair,
7 members of the Commission. Thank you for the
8 opportunity to report to you today on what
9 Election Data Services' contract to tabulate and
10 analyze three studies that the Election
11 Assistance Commission had undertaken.

12 These studies include; the Election Day
13 Survey, the Military and Overseas Absentee
14 Ballot Survey, and the National Voter
15 Registration Act survey. Each of those surveys
16 were designed to provide EAC with important

17 information on the status of election
18 administration in this country, so that you can
19 identify and prioritize issues affecting voter
20 enfranchisement, and participation in the
21 electoral process.
22 Two of the surveys, election day and UOCAVA

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1 survey, are brand new and contain questions that
2 have never been asked before in any
3 jurisdiction. In each instance, these surveys
4 have been sent to the 50 states of the nation,
5 as well as the five territories covered by the
6 Help America Vote Act, but these are not just 55
7 surveys, because in each instance, the states
8 had to gather information from their counties
9 and their townships.

10 In total, we hope to have information from
11 8,014 counties and townships that have a role in
12 administrating elections in this nation. Some
13 of the data that's been asked for was not
14 collected, tallied, or generated ever before.
15 As a result, many election administrators had to
16 attempt to retrieve and compile the data,
17 sometimes after the election took place.

18 I am here to report to you on our efforts
19 to pull together the information from the first

20 two of those surveys; the Election Day Survey,
21 and the UOCAVA survey.

22 As part of our initial effort, we had to

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1 deal with a wide variety of responses that came
2 in from the states. Some sent in data, and
3 spread sheets, and some sent data in Word
4 documents. Even the spread sheets came in
5 different forums despite the efforts to fill out
6 a sample with the questionnaire, some had
7 individual question responses, while others had
8 individual counties on different tabs in the
9 spread sheet. Some sent in PDF documents, and
10 others faxed in their answers.

11 Needless to say, it took us a while to get
12 all these differently formatted responses from
13 all these different jurisdictions into a uniform
14 database.

15 Concerning the Election Day Survey, the
16 survey requested county and township information
17 on a variety of topics from the November general
18 election. These topics include voter
19 registration and turn-out, absentee and
20 provisional ballots, over votes and under votes
21 for federal offices, precincts and polling
22 places, poll workers, and voting equipment.

1 State responses have been standardized and
2 imported now into a special database created for
3 this project.

4 Several data integrity and quality
5 assurance reports have been created. I am here
6 today to report to you about the completeness of
7 the survey responses.

8 The Election Day Survey contains some 50
9 different data items from each county and
10 township level jurisdiction. We're missing
11 surveys from three states right now, and
12 territories, and have received only state wide
13 information from one other.

14 The rates of completion and the response
15 rates received so far vary widely. One state
16 gave us about 91 percent of all the data that
17 was asked for, but another state, it was less
18 than 20 percent. These are calculated on the
19 basis of both having answers to specific
20 questions and having data from all the
21 jurisdictions in the state. In some instances,
22 individual counties had individual data items

1 missing. In others, all responses from a county

2 were missing.

3 We have also found that entire questions
4 were not answered from anywhere in the state.
5 In total, the completeness rates for the state
6 responses end up with about five states being
7 over 80 percent complete, and 23 states with 60
8 to 80 percent complete. But we do have, as I
9 said, two states are less than 20 percent
10 response.

11 And as I indicated, three states that have
12 not responded. Three states or territories that
13 have not responded so far. As I have already
14 indicated, we have had a wide variety of
15 responses on individual questions. And that
16 fact alone has caused us problems in attempting
17 to analyze the information.

18 In my prepared testimony, I have included a
19 table that reviews each of the questions asked,
20 and provides data on what percent of the
21 jurisdictions in the nation provided data for
22 that question. It also shows what percent of

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1 the registered voters are included in those
2 jurisdictions, so that one has additional
3 context in which to review the information.

4 Concerning individual subjects,

5 registration data has been spotty in what's been
6 provided. We have data on active registration
7 from two-thirds of the nation's jurisdictions,
8 but for inactive registrations, from less than
9 half. We have been able to determine that 16
10 states combine active and inactive registration,
11 and their counts of overall registrations in the
12 state.

13 On the other hand, the other 34 states
14 report only active registrations when they say
15 how many people are registered. We have nearly
16 90 percent of the jurisdictions reporting how
17 many total ballots were cast in last fall's
18 election, but as I indicated to you last May in
19 my earlier testimony, not all states elect this
20 information. Some states just have the votes
21 cast for the highest office, as an indication of
22 turn-out, even though we know from other states

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1 that not everyone votes for that highest office.
2 More states are reporting total turn-out than in
3 earlier years now, but there are still at least
4 a half dozen states that don't provide that
5 number. Roughly two-thirds of the jurisdictions
6 provided information on absentee ballots, but
7 less than 45 percent told us how many persons

8 cast provisional ballots, and just one-third
9 said how many were actually counted.
10 We have got information on the number of
11 poll workers from about 70 percent of the
12 jurisdictions, but only about a third of them
13 said whether they had fewer poll workers than
14 what was required. We still don't know the
15 total number of precincts or polling places in
16 the nation, and we're getting slim information
17 on whether these locations are handicapped
18 accessible.

19 Despite the problems with the missing data,
20 we have assembled a list of subjects and column
21 calculations for the Election Day Survey report.
22 These subjects are the percent registered, and

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1 voting age population, and of citizenship voting
2 age population, percent turn-out of voters,
3 voting age population, and of citizenship voting
4 age.

5 Concerning registration, because not all
6 states are uniform in terms of active or
7 inactive, for states where inactive is included
8 in total registration, we will look at what
9 percent of total registration is inactive. And
10 for states without inactive in their total

11 registration, we will look at what percent
12 increase will inactives add to the total size of
13 a voter file, as these states look towards
14 statewide implementation of a statewide voter
15 file.

16 Where have the ballots come from? For
17 total ballots cast, what percent came from
18 polling places, what percent from absentees,
19 from early voting and from provisional ballots.
20 And absentee activity, what is the percent of
21 registered ballots returned compared to what
22 percent of return ballots were counted and not

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1 counted.

2 For provisional ballots, we will look at
3 what percent of the cast provisional ballots
4 were counted, and what percent of overall
5 ballots were, in fact, provisional.

6 Concerning drop-off analysis, we will look
7 at Presidential, U.S. Senate, and Congressional
8 races to see how many people fall off down the
9 ballot. We will look at rates of under votes
10 and over votes for each of these, and we will
11 compare this information with the type of voting
12 equipment used.

13 For poll workers, we hope to have an

14 overall number of poll workers in place in this
15 country, but we'll also look at the average
16 number of poll workers per precinct, and per
17 polling place.

18 Concerning polling places, we will look for
19 the total number of precincts and polling
20 places, and then hope to have what percent of
21 the polling places are, in fact, accessible.
22 All of this, so far, is related to the Election

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1 Day Survey.

2 Now, I'd like to turn my attention to the
3 second survey that we're reviewing, the U.S.
4 UOCAVA survey. That survey requested county and
5 township level information, again, for the
6 November 4th general election from each of the
7 states, territories, in the District of
8 Columbia.

9 The topics covered included a wide variety
10 of topics; number of absentee ballots
11 transmitted to domestic military citizens,
12 overseas military citizens, and overseas
13 citizens collectively, and the number of advance
14 ballots transmitted to these individuals, number
15 of absentee ballots returned by each of these
16 groups, the manner in which each of these

17 ballots were returned by mail, by fax, by
18 e-mail, number of absentee ballots returned by
19 military and overseas that were actually
20 counted, and what were the reasons why absentee
21 ballots returned were not counted, were there no
22 postmarks, no voter signature, no verifiable

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1 signature, no date of signature, notary public,
2 so forth. And then the number of federal
3 write-in, absentee ballots received from
4 uniformed services and overseas.

5 So far, the responses to the UOCAVA survey
6 have been received from 44 states. The most
7 complete responses dealt with Questions 2 and 7,
8 that I have outlined dealing with the number of
9 advanced military and federal, write-in absentee
10 ballots that have been sent and returned by the
11 military overseas.

12 In about 15 states, the responses to all
13 questions are complete or nearly complete for
14 all jurisdictions. Many states, however, did
15 not respond to certain questions. One reason
16 for the low response rate might be that many
17 states did not regularly track this data, as I
18 indicated earlier, and were unable to retrieve
19 this information after an election. A better

20 response might be expected in the future when
21 systems can be set up in advance by identifying
22 the items for the survey.

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1 In summary, I hope to report to you soon on
2 the wide variety of activities coming out of
3 these surveys. And with that, I'll be happy to
4 answer any questions you might have.

5 CHAIR HILLMAN: Thank you, very much.
6 As you noted when you began your report, that of
7 the two surveys that you just reported on, they
8 were both brand new and contained questions that
9 had never been asked before of election
10 officials. And when we embarked on at least the
11 Election Day Survey, we, too, the EAC, was brand
12 new, and we knew that there were things that we
13 would learn along the way.

14 From your report, it sounds like we have a
15 lot of lessons that we've learned. And I'm just
16 wondering if you were prepared to summarize some
17 of the key lessons learned in the collection of
18 this data, knowing that one of the purposes of
19 this is so that when you report to Congress and
20 to the American public, we can report based on
21 statistics, and not just anecdotal information.

22 MR. BRACE: Certainly, Madam Chair.

1 We plan, as part of the overall report, to
2 have a whole series of recommendations for the
3 Commission on how this kind of data could be
4 compiled, whether or not it could be compiled
5 ahead of time.

6 Certainly, the main thing that we have
7 heard from a number of the states is to get the
8 information out to them ahead of time so that
9 they have an opportunity to go to their
10 jurisdictions and have those jurisdictions
11 collect that information in a systematic way. I
12 know that these came in late because of your
13 delays that occurred, just in terms of getting
14 appointed.

15 And so, unfortunately, we're caught with
16 the 2004 election with not having complete,
17 because the surveys got out there late.

18 But I think in terms of looking at the
19 future, it does have a good benchmark from which
20 we can begin to take a look at and try to get
21 states to collect this kind of information.

22 As I indicated before, not everybody

1 collects total number of persons that went to

2 the polls, but I know, because of your efforts
3 in the past year, we have had more states that
4 are now collecting that.

5 We're not at a hundred percent yet though,
6 but certainly, I know that many states are
7 starting to take a look at that.

8 As you also take a look at the
9 implementation of the statewide voter
10 registrations systems, I believe that getting
11 guidelines to the states early on, the kind of
12 data that would be good to pull out of those
13 data sets will be critical, and that's what we
14 intend to state in our report.

15 CHAIR HILLMAN: Would you say that
16 it's important for the EAC to continue
17 collecting this election day data on a regular
18 basis, going forward?

19 MR. BRACE: Oh, absolutely. And I
20 think, in looking at the data right now, we're
21 collecting it at the county level, but I know
22 some of our analysis capabilities are probably

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1 hindered by having that gross level of data.

2 Ultimately, it would be nice to have data
3 at the precinct level so one could look at
4 specifically what's going on, in terms of these

5 error rates or this information from these

6 particular parts of the jurisdiction.

7 As one looks at the overall impact on

8 different demographic routes, it is very hard to

9 have that information at the county level, and

10 be able to give a concrete analysis of that.

11 Having data at the precinct level would be much

12 better.

13 CHAIR HILLMAN: We're testifying

14 before the House Appropriations Subcommittee in

15 mid April. And so it would be useful to have

16 some information from you prior to that, that we

17 could consider for our testimony to explain why

18 the collection of this data will be, in the long

19 term, useful and necessary.

20 MR. BRACE: By all means, Madam

21 Chair, and we'll have a lot of information for

22 you shortly.

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1 CHAIR HILLMAN: Great. Thank you.

2 Commissioner Martinez.

3 COMMISSIONER MARTINEZ: Kim, I guess

4 I want to make a quick distinction about the

5 Election Day Survey is one that the EAC has

6 asked, essentially, for voluntary compliance

7 from the states. There is nothing in HAVA that

8 says we're supposed to do that.

9 MR. BRACE: That's correct.

10 COMMISSIONER MARTINEZ: On the other
11 hand, using HAVA information, there is a
12 provision in HAVA which requires the EAC to
13 collect information, not just statewide, but
14 down to the local jurisdiction level so that we
15 can be informed as to how many using HAVA
16 ballots are being sent out, and how many are
17 being returned, and counted.

18 I don't have the precise word, but I think
19 that, essentially, captures the requirement in
20 HAVA. And I think the work under NVRA is
21 statutory, that we're supposed to collect this
22 information.

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1 MR. BRACE: That's correct.

2 COMMISSIONER MARTINEZ: There are
3 very compelling reasons why the EAC would need
4 to have the election survey information so we
5 can get a better snapshot as the Chair
6 articulates, from a more statistic based
7 perspective, as opposed to one that is merely
8 anecdotal, as I think that is very compelling.

9 With regard to the other two surveys, those
10 are, in fact, mandated, if not our governing

11 statute by our NVRA.

12 CHAIR HILLMAN: Mr. Vice-Chair.

13 VICE-CHAIRMAN DEGREGORIO: Thank you,

14 Madam Chair.

15 Kim, I believe this information is going to

16 be very helpful to everyone throughout the

17 country. Because we get this kind of

18 information, and sometimes what I find,

19 particularly when you see voter registration

20 take place, you point that out on how you

21 separate this by the inactive and active

22 registrations because some states don't put the

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1 inactive in their totals, makes them look pretty

2 good, and the turn-out up there is in the high

3 70s and 80s, but if you include the inactive, it

4 comes down.

5 It is always been a contention at the

6 state, saying, well, you have got this and this

7 in there. What you're saying is, when you

8 provide this data, you will try to do that

9 detailed analysis and provide the details of

10 ones that include inactive and the ones that

11 don't. So when we do a comparative analysis,

12 you will take that into consideration.

13 MR. BRACE: Surprisingly, the fact

14 that whether or not a state does it this way or
15 does it this way has never been compiled before.
16 So this is one of the pieces of information that
17 we're trying to pull together just by looking at
18 reviewing the data, and then going back for the
19 states to confirm what we're seeing in the data.

20 VICE-CHAIRMAN DEGREGORIO: I know your
21 staff is going back to the states that have
22 given or are providing data that's not complete.

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1 And particularly not the UOCAVA survey that
2 Commissioner Martinez just spoke about, because
3 you have some very specific questions, some of
4 which are taken right out of the statute.

5 It does concern me because you indicate the
6 Questions 2 and 7, it just indicates the number
7 of advance ballots transmitted. No. 7, number
8 of write-in ballots received, but it doesn't get
9 to No. 3, the number of absentee ballots
10 returned by these voters, which is really very
11 important, I think, for any kind of analysis, to
12 find out not just how many ballots are
13 transmitted to military and other overseas
14 citizens, but how many came back.

15 MR. BRACE: Yes. Unfortunately, what
16 we're seeing so far, again, our main

17 concentration has been on the Election Day
18 Survey, but we have been compiling and moving
19 forward with the UOCAVA one.

20 Unfortunately, what we're seeing is that
21 the response rates are worse, in terms of the
22 UOCAVA, even though, as Commissioner Martinez

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1 said, it is a required set of data, but we're
2 finding that it is harder to pull that
3 information out and get the locals to provide
4 that information.

5 VICE-CHAIRMAN DEGREGORIO: Thank you.

6 COMMISSIONER SOARIES: Madam Chair, I
7 support the concept of having precinct level
8 data because I think at some point, when we
9 attempt to align certification issues that is
10 equipment and then standard/guidelines which
11 creates some expectations, the only way to
12 measure or project success is to have data.
13 And if we have no data, then we never know the
14 ultimate impact of our work.

15 Now, the state of Georgia, I don't dare to
16 speak for them, but I do know the state of
17 Georgia was one of the early states that made a
18 decision pre-HAVA to change all of their voting
19 equipment. And it was driven, in large measure,

20 by precinct level data that measured over
21 votes and under votes. And the disparities by
22 precinct was so significant, they didn't even

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1 study the problem. They just sought to change
2 all of the equipment. And we're going to
3 Georgia, of course, to look at their process.
4 But there is a relationship between equipment
5 standards and data. And if we have integrity in
6 all areas, then I think our work will be well
7 informed, and we'll be able to measure our own
8 progress. So I endorse that guidance effort.
9 To go to Commissioner Martinez's question,
10 I don't know what it's going to take to get the
11 kind of responses. I don't know if it's our
12 being better facilitators about the data
13 processing process, I don't know if it's timing.
14 I don't know if it's some changes in HAVA. I
15 don't know what it takes. Hopefully, our
16 discussion with the National Association, with
17 the Secretary of States, and the National
18 Association of State Election Directors will
19 help inform us as to how we can best help them
20 work on this collective project, because it's in
21 the country's interest to know what happens on
22 election day.

1 MR. BRACE: You are absolutely
2 correct in identifying those two groups. They
3 are critical in this whole process. This is
4 why, for the past twenty years, I have always
5 attended the NASAD meetings every single time
6 that they have met because you can have an
7 opportunity to meet with each of the state'
8 election directors, and then get clues from them
9 on what's going on, but certainly using that
10 opportunity to try to push them to provide the
11 kind of data.

12 I know Commissioner DeGregorio and myself
13 were out in the Portland last summer to speak
14 before the NASAD group, and reminded them of the
15 importance of the data that was going to be
16 collected by the EAC.

17 COMMISSIONER MARTINEZ: Madam Chair,
18 if I can make one comment about what
19 Commissioner Soaries said. That is very much to
20 the point. We're going to hear in the next part
21 of this meeting about our function as a national
22 clearinghouse. And to get to Commissioner

1 Soaries's point, to act in an incredible fashion

2 with integrity as a clearinghouse, it would seem
3 to me best practices, yes, but anecdotal
4 experience is take a look at it and decide if we
5 want to replicate these practices, but it is
6 disseminating information that does not have
7 integrity.

8 We cannot get there unless the data
9 reflects the true picture of what is happening.
10 So it is critical, and I think all of us would
11 agree it is critical, from all perspectives,
12 with what this agency's supposed to be doing.

13 MR. BRACE: One of the things you
14 could take a look at is, look at back in the
15 late 1970s, Roy Saltman, who at that time worked
16 at NIST, actually put together a very good
17 document that went into detail about the
18 particular problems that occurred in a given
19 election. That was crucial in providing a lot of
20 insight, and it's one of the key roles that,
21 indeed, the EAC could move towards in the
22 future.

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1 CHAIR HILLMAN: Okay. Thank you,
2 very much. We look forward to your next report.
3 All right. If we could have the next panel
4 to assemble at the table, please.

5 Okay. Thank you. Before we begin with the
6 next panel, I want to acknowledge some special
7 guests that we have in the audience today. We
8 have about five Secretaries of State with us,
9 and I'd like to begin by introducing Secretary
10 Rebecca Vigil-Giron from the State of New
11 Mexico, and also president of the National
12 Association of Secretaries of State, and
13 Secretary Donnetta Davidson from the state of
14 Colorado, Secretary Mary Kiffmeyer, from
15 Minnesota, and Secretary John Gale from
16 Nebraska.

17 And please forgive me if I have overlooked
18 any secretaries. I will get to the fifth
19 gentlemen in a moment, but if I have overlooked
20 anybody in the audience, please let me know
21 you're here.

22 Okay. Our next panel of presentations is

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1 to address its role of the United States
2 Election Assistance Commission as a
3 clearinghouse.

4 It is a mandate of the Help America Vote
5 Act that the EAC provide this service, and
6 collect, and make available information and data
7 that is pertinent to the administration of

8 federal elections in the United States. And so
9 as we try to wrap our arms around that humongous
10 task, we will begin with today's discussion and
11 presentation from three different perspectives,
12 state, local, and community activist
13 organization, voter advocacy, voting rights
14 concerns.

15 Let me introduce the panelists, and I will
16 ask that you, please, just go in the order as I
17 am introducing you. Secretary Pedro Cortes,
18 welcome, from the state of Pennsylvania. It
19 says Commonwealth of Pennsylvania.

20 Coming from the Commonwealth of
21 Massachusetts, I understand, Mr. Tony Sirvello,
22 III, Executive Director of the International

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1 Association of Clerks, Recorders, Election
2 Officials, Treasurers. Anybody else?
3 Affectionately known as our IACREOT. And
4 Mr. Edward Hales, jr, Senior Attorney for the
5 Advancement Project here in Washington, DC.
6 Secretary Cortes.

7 MR. CORTES: Chair Hillman,
8 Commissioners of the United States Election
9 Assistance Commission, good morning. My name is
10 Pedro Cortes, and I serve as Pennsylvania's

11 Secretary of the Commonwealth. In this
12 capacity, I manage the Pennsylvania Department
13 of State, the agency charged with overseeing the
14 states electoral process.

15 Thank you for inviting me to participate in
16 today's meeting. I appreciate the opportunity
17 to speak on ways that the EAC can continue to
18 assist the states in its role as a
19 clearinghouse.

20 The suggestions I am about to present will
21 surely benefit me in Pennsylvania, and my
22 colleagues in other states and territories.

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1 Before I proceed with my recommendations, please
2 allow me to note that in December, 2004, the
3 Governor established an Election Reform Task
4 Force to consider a host of election issues.
5 They include voter participation, provisional
6 absentee voting, accessibility compliance, and
7 the upgrading of our voting equipment. I served
8 as the chairperson of the task force. I have
9 confident that the deliberations of the task
10 force will yield valid recommendations to
11 improve the electoral process in Pennsylvania.

12 The above being said, Pennsylvania looks
13 forward to receiving further guidance from the

14 EAC on how to properly and realistically
15 implement the mandates of the Help America Vote
16 Act. To this end, it would be extremely helpful
17 if the EAC could provide additional information
18 and clarification on the following areas; No. 1,
19 voting system standards.

20 I am aware that the EAC and the National
21 Institute of Standards & Technology are working
22 diligently to issue a draft of Voluntary Voting

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1 System Standards for guidance by next month,
2 April, 2005. Many states, including
3 Pennsylvania, eagerly await these guidelines in
4 order to purchase new voting equipment.

5 Given that the states must have a
6 HAVA-compliant voting system in place by January
7 1, 2006, I would appreciate if the EAC could
8 provide or develop a suggested time line for how
9 states can meet this mandate. Ideally, the time
10 line would consider the period vendors may need
11 to incorporate the new guidelines into their
12 equipment, federal and state testing, and
13 certification requirements and procurement of
14 such equipment.

15 No. 2, statewide voter registration list.

16 In addition to the forthcoming EAC guidance on

17 the statewide voter registration list, I would
18 suggest a comprehensive assessment of the
19 different voter registration systems states have
20 implemented or plan to implement. The goal of
21 such an assessment would be to identify best
22 practices and challenges that state have had to

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1 overcome.

2 Questions to consider include whether the
3 system was built in house, or with the help of
4 an outside vendor, how the database works, how
5 voter information is exchanged from in between
6 the state election office and end users, and
7 related developmental and end user issues.

8 No. 3, cost to implement HAVA. I am
9 frequently asked by legislative advocacy groups,
10 reporters, and the public, how much it will cost
11 to implement HAVA and to hold elections on new
12 mandates. More specifically, how much money
13 states and local governments will have to
14 contribute.

15 I would welcome a study that answers the
16 above, along with information on how states plan
17 to address and pay for their various
18 accessibility requirements. For example, making
19 polling places fully accessible, and providing

20 services to voters with limited English

21 proficiency.

22 No. 4, frequently asked questions on the

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1 EAC website. Election officials and voters

2 alike would benefit from additional questions

3 and answers on the frequently asked questions

4 section of the Commission's website. Relevant Q

5 and A can be taken from the EAC training

6 sessions, such as the one held at the most

7 recent National Associations of Secretaries of

8 State Winter Conference. Answers in the FAQs

9 section could even include a hyper link to

10 advisory opinions the EAC has issued on the

11 given subject.

12 In conclusion, I would like to, once again,

13 thank the EAC for giving me the opportunity to

14 present these recommendations at today's

15 meeting.

16 I also want to thank the EAC for its

17 commitment to help Pennsylvania and other

18 jurisdictions implement provisions of the Help

19 America Vote Act.

20 CHAIR HILLMAN: If Commissioners

21 couldn't mind, we can hold our questions to the

22 end of the presentation. Thank you.

1 Mr. Sirvello.

2 MR. SIRVELLO: Good morning, Chair
3 Hillman, Vice-Chair DeGregorio, Commissioner
4 Soaries, and Commissioner Martinez.

5 On behalf of my organization, our
6 president, Gertrude Walker, Supervisor of
7 Elections in Fort Pierce, Florida, I want to
8 thank you for inviting me to participate in this
9 panel.

10 The business of election administration in
11 the United States is as varied and diverse as
12 its 50-member states. The individuals
13 responsible for such administration are called
14 by many names; supervisor, administrator, county
15 clerk, county auditor, secretary, chairman,
16 commissioners, etc. And the laws of each of
17 these individuals enforce, verify the axiom of
18 what works here may not work there.

19 For example, all mail ballot elections in
20 Oregon would not work in my home state of Texas.
21 When a federal law is passed which brings about
22 continuity in federal elections, for example,

1 National Voter Registration Act of 1993, and the

2 Help America Vote Act of 2002, there is produced
3 some common ground among the states in areas of
4 election administration, for instance, the
5 requirements in Section 303 relating to a
6 statewide voter registration list. And yet
7 there remains flexibility among the states as to
8 the methodology used to implement such a system,
9 as is evidenced by those states that have
10 already initiated a statewide voter registration
11 system and have prior to the passage of HAVA.

12 This is where the Election Assistance
13 Commission, in its capacity as a clearinghouse,
14 can provide invaluable assistance to the states
15 and local jurisdictions as an information source
16 and an election administration storage bank.

17 As a predecessor to the clearinghouse
18 function of the Election Assistance Commission,
19 the Office of Election Administration of the
20 Federal Election Commission, for many years,
21 performed just such a function. The heart and
22 soul of that operation, of course, currently,

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1 staff members of the Election Assistance
2 Commission, Peggy Sims, Brian Hancock, Bryan
3 Whitener.

4 As a member of the OEA's advisory panel, I

5 was privileged to work closely with and
6 participate and make use of many of the
7 resources, voting system standards program,
8 election case law, computerizing election
9 management, ballot access procedures, absentee
10 ballot issues and options, recent innovations in
11 election administration. These publications
12 provided background and how-to information for
13 election officials throughout the United States
14 and were instrumental, in many cases, for
15 bringing about a community of interest and
16 knowledge among election officials. They were
17 especially beneficial to newly elected or newly
18 appointed administrators.

19 As a precursor, I solicited opinions from
20 the many local election officials, and I
21 received several excellent responses. In so
22 doing, I would like to give the individuals

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1 credit for responding back. One item that
2 appeared on most of the responses was a
3 suggestion that the EAC collect information on
4 contracts and requests for proposals for new
5 voting equipment, thereby creating a library of
6 RPs and contracts for voting equipment
7 procurement, and publicizing availability of

8 same to election jurisdictions.

9 This idea was at the top of the list

10 provided by supervisor of elections in Florida.

11 I am speaking from personal experience, I

12 requested completed forms in several

13 jurisdiction in preparing the RFP for Harris

14 County, Texas for the purchase of a new voting

15 system and new election management system.

16 In keeping within that same focus, others

17 suggested that it would be helpful to gather

18 information on the deployment and administration

19 of the equipment after purchase. For instance,

20 how many pieces of equipment are needed per

21 registered voter, turn-out history, what type

22 and how much training is recommended for the

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1 implementation of the new equipment, what

2 approach should be taken to reach out to the

3 voting communities. What about the storage of

4 the new voting equipment, what about the

5 transportation of the new voting equipment.

6 These suggestions were high on the list of

7 director of elections for Kansas City, Missouri,

8 and stressed a study on absentee ballot and

9 early voting, and how those systems had been

10 abused to prey on early voters.

11 Again, state laws are diverse in a liberal
12 or conservative approach to early ballot access.
13 Sharon, along with others, asked for suggestions
14 on recruitment, training of poll workers, a
15 dilemma faced by most election jurisdictions in
16 the country, and one that I know Commissioner
17 Soaries has had special interest in. Sharon
18 wondered if perhaps an election workers pool
19 could be set up similar to the jury pool, and it
20 would be created to stockpile available workers.

21 Other suggestions included a national
22 publication of instances where vote fraud has

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1 been prosecuted, and a single source for
2 researching case law on elections.
3 Cliff -- in Texas offered several items
4 they would like to see. Cliff would like to see
5 EAC act as a clearinghouse of information for
6 the federal voting system program. He proposes
7 a study on the best method of communication
8 between overseas and military voters and the
9 local election official. Cliff suggested there
10 would be a move towards national standardization
11 of voter ID requirements with EAC acting as a
12 clearinghouse for such an initiative, the super
13 site polling location.

14 Location is a key issue in the country
15 today. Cliff proposed EAC should be the
16 clearinghouse for its adaptability for the
17 voting process, especially in jurisdictions
18 covered by Section 5 of the Voting Rights Act.
19 Cliff endorses the idea of Super Tuesday being
20 declared a national holiday, even suggesting
21 that public transportation to and from a super
22 poll site be free on election day.

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1 Karen Hottendure, Emporia, suggested
2 providing links to all breaking election news,
3 and I don't think Karen is advocating putting my
4 good friend Doug Chapin out of business.

5 There are many other suggestions relating
6 to EAC as a clearinghouse of election
7 administration, but the ideas just illuminated
8 best sum up the responses from unique, local
9 officials. It is a daunting task you undertake,
10 because many times, election administration is
11 only as relevant as the next piece of
12 legislation passed.

13 If I might add, a library of state election
14 codes would benefit those jurisdictions that
15 might want to enact a piece of legislation in
16 their respective states with the background of

17 what it took to move that piece of legislation

18 through the adopting states.

19 Again, I had personal experience with that,

20 and the fact that in 1980s, I stole the law from

21 Vice-Chair DeGregorio's home state, Missouri, on

22 how to make public buildings accessible as

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1 polling places, free of charge. And I took the

2 statute right out of the Missouri statute, and

3 introduced it in the Texas Legislature, and it

4 is now law.

5 In summation, the role of the EAC as a

6 clearinghouse of information is one of extreme

7 importance. The EAC, now recognized as the

8 federal agency, and I capitalize that, as T-H-E,

9 for election administration and implementation,

10 would offer a base of knowledge, facts, and

11 suggestions that election officials throughout

12 the nation could look to for guidance and

13 assistance.

14 And, in conclusion, I would like to offer

15 the assistance of my organization and its 1,600

16 members to help you in any way possible in this

17 endeavor. Thank you.

18 MR. HAILES: I am pleased to join my

19 fellow panelists in addressing some of the

20 specific recommendations we have for the
21 clearinghouse function of this Commission. It's
22 truly an honor to serve in this capacity.

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1 I am, again, Edward A. Hailes, Jr., a
2 senior attorney with Advancement Project, which
3 is a legal advancement and policy action group
4 that provides direct assistance to community
5 groups who work on the ground to help achieve a
6 just democracy.

7 We believe that the clearinghouse function
8 of this Commission is extremely important. We
9 know that many of the recommendations made today
10 will require sufficient funding. If we can
11 help, through our testimony and action, in
12 bringing that about, we certainly will.

13 We believe that the role of this Commission
14 will greatly enhance capacity for ration
15 justice, and most importantly, challenge current
16 election policies and procedures in order to
17 magnify participation in our democracy. And I
18 want to make a note that while we emphasize
19 importance of compiling and disseminating best
20 practice, it is may not be a bad idea to point
21 out worse practices, not to be emulated, but to
22 be avoided.

1 During 2004 election, my Advancement
2 Project worked on the ground and provided legal
3 counsel to a number of voter registration
4 groups. We were challenged in conducting
5 extremely sensitive research, to document
6 specific standards and procedures for several
7 counties, which varied in the implementation of
8 HAVA throughout the land. It was very
9 challenging to attempt to point out to the voter
10 registration groups with whom we worked what
11 specific procedures were followed by one county
12 versus another. And many other groups, some of
13 them in this room, League of Women Voters, they
14 also produced some technical assistance tools to
15 find a way to help groups know what their rights
16 and responsibilities are under the law.

17 It would help, in the clearinghouse
18 function of this Commission, to post information
19 that shows the wide disparity of procedures that
20 are implemented that are supposed to be in
21 conformity with HAVA and NVRA across the land.
22 I think Americans are often startled to find out

1 there is such a wide disparity of procedures and

2 standards across the country. Most people
3 believe that election systems are the same
4 across the country, as they are in their own
5 specific jurisdiction. And when they attempt to
6 help groups in other counties, they find that
7 the rules may be different.

8 It is, indeed, a startling reality that we
9 have these complete differences in local
10 practices and laws. And Advancement Project and
11 many other groups attempted to pull together
12 brochures and charts to present to local groups
13 in showing how the specific rules were being
14 enforced in their jurisdiction. So we know
15 there is this need for this Commission to find a
16 way to put information in the hands of voters,
17 and not just election officials.

18 I want to emphasize that voters are in need
19 of the assistance of this Commission. They need
20 information. In plain language, they need
21 information that is written in language other
22 than English. They need information that will

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1 help to put a spotlight on election procedures
2 and policies.

3 I also wanted to emphasize, as I listen to
4 Mr. Brace talk, about the difficulties in

5 collecting information from states, specifically
6 on a county and township level. And as
7 Commissioner Soaries said, the precinct-based
8 data operation is so essential, that we also
9 remember that race-specific data is important to
10 the election.

11 HAVA and NVRA required both uniform and
12 discriminatory implementation of the law, and so
13 it is very important, on a precinct basis, to
14 collect, analyze, and disseminate race-specific
15 data.

16 Lastly, I sort of want to emphasize, and I
17 am rely mostly on the information in my written
18 testimony, but because in our experience, we've
19 seen a combination of barriers affect the voice
20 of poor communities of color in participating in
21 our democracy, that it would help to have the
22 Election Assistance Commission focus attention

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1 on voter intimidation screens, including
2 discriminatory challenges to voters poorly
3 designed ballots, inaccurate ballot translation,
4 a shortage of translators to assist voters who
5 speak languages other than English, failure to
6 process registration on time, or at all,
7 inaccurate registration roles, over broad

8 percentage of voter roles, and unreasonably long
9 lines. At Advancement Project, we certainly
10 want to make ourselves continually available to
11 assist in your process of being this
12 clearinghouse.

13 One of my colleagues says more items
14 related to election administration are really
15 clear in the house, that there is no
16 misunderstanding about requirements and specific
17 procedures, and that the voter registration
18 groups and racial justice organizations that
19 provide an advocacy role in compliance with the
20 Voting Rights Act will actually be able to come
21 to this Commission and get the data analyses
22 that would help to put pressure on those

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1 election officials who are not following the
2 law.

3 We, clearly, make ourselves available,
4 again, to assist you. I believe you're on the
5 right road. We're pleased to see how many of the
6 hearings going into the field where people from
7 voter registration groups can come to the
8 Commission and offer their views.

9 So, again, we thank you for inviting us and
10 we hope to continue a relationship and a

11 partnership with the EAC.

12 CHAIR HILLMAN: Thank you, very much,

13 Mr. Hailes. I think your testimony is best

14 summarized by a word that we use all the time,

15 and that is transparency of the process.

16 Commissioner Soaries. Did I call on you

17 too soon? I can come back to you.

18 COMMISSIONER SOARIES: No.

19 First, I am grateful to each of you for

20 your presence, and for your willingness to share

21 these recommendations, and your offer to support

22 our process of having capacity to do all of this

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1 great work. It's been, our evolution has been a

2 process, rather than our arrival being an event.

3 So this helps us to think through where we're

4 going.

5 The IACREOT perspective on data collection

6 would help me. Our discussion earlier about our

7 desire to have data, but we understand that no

8 election official, no clerk, is sitting in his

9 or her office waiting to do more work at the

10 request of the Federal Government.

11 So, in your mind, Tony, how do you think we

12 can best approach this in a manner that is not a

13 burden, but rather a benefit to everyone

14 involved?

15 MR. SIRVELLO: Well, I think
16 Commissioner Soaries, that one of the things Kim
17 Brace said, the secret is to ask for the
18 information before the election. Because I
19 know, as a previous election administrator
20 myself for many years, when you get a survey
21 after the election is over, you go to someone
22 that is perhaps handling overseas ballots, and

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1 you say, "How many of these were sent APO and
2 HFO?" "We don't know. We didn't keep that
3 information."

4 But if we knew ahead of time that you're
5 going to ask for this information and it is
6 going to be of assistance to the entire country
7 in future elections, I think that would be the
8 key. And I think something else that happens
9 sometimes, that you always have to put
10 definitions on what you're doing also, because
11 one of the things that Kim said was to talk
12 about the number of people that showed up at the
13 polling place, the number of people that voted.

14 Well, obviously, because of the
15 introduction of provisional ballots in 2004,
16 that number went up substantially from 2002.

17 And if you just put the raw figures there, you
18 would not know that the reason for the increase
19 was because of the new law.

20 COMMISSIONER SOARIES: I just want to
21 make a quick comment in response to the obvious
22 consensus on the panel that there be a

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1 clearinghouse that provide information, laws,
2 procedures, etc.

3 One of our challenges is that we're working
4 on something that the country's been doing for
5 about 230 some odd years, and that the Federal
6 Government's only been working on for over a
7 year. And the model that was crafted for
8 American democracy was a state-based model that
9 assumed loyalty, identification, and effects, on
10 a state basis.

11 Today, we have media and we have mobility
12 unlike never before in history. People get news
13 from USA Today before they do in their local
14 papers. And so we take seriously this need to
15 have a central locale for information in a
16 society where people will live in New York the
17 first part of the year, Florida the second part
18 of the year, and compute back and forth.

19 It is a daunting task, particularly when you are

20 attempting to do it in a way that is unobtrusive

21 and helpful, rather than punitive.

22 So you have given us some good, general

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1 recommendations, but the more specific you can

2 be after today, the more helpful you would be.

3 I am done.

4 CHAIR HILLMAN: For the moment.

5 Vice Chairman.

6 VICE-CHAIRMAN DEGREGORIO: Secretary

7 Cortes, you brought up a very important subject,

8 and that is, the cost to implement HAVA. And I

9 think we all recognize as a Commission that when

10 the Federal Government provided for these

11 mandates under HAVA, they didn't certainly

12 provide all the funds because they haven't fully

13 funded HAVA. And there is \$800,000,000 left to

14 appropriate to fully fund HAVA, much less do

15 other things that HAVA has mandated, but it is

16 discovered that it is going to cost more money.

17 And I think your idea to do a study to find out

18 how much it has cost the states, local

19 governments, is, indeed, a good one. Because I

20 know in my home county, St. Louis, Missouri,

21 there is a big story how they are struggling to

22 replace punch cards, they'd like to go to DRE,

1 but they don't have enough money. They are
2 looking at optical scan, but they realize that
3 is expensive too.

4 So it is the whole issues of what HAVA has
5 cost local and state governments. You have
6 worked hard on your statewide voter registration
7 database, and recognize that's a process that
8 takes time and money to implement. I don't know
9 if you are working with NAS, perhaps that
10 mechanism, to try to figure this out, and maybe
11 help instruct us in some way that we can perhaps
12 do some study here or ask Congress to do a study
13 to find out what the costs are all about.

14 So I think a case could be made to Congress
15 to fully fund HAVA, perhaps add more, as time
16 goes on.

17 MR. CORTES: In fact, one, I wanted
18 to note, for the record, my recommendations came
19 about as a result of requesting feedback from
20 our office, our NAS Office. Leslie Reinholtz and
21 the rest of the staff have a good sense of what
22 are the pressing needs of all the states. I did

1 not want to do this in a vacuum. I see my

2 presence here as speaking broader than just
3 Pennsylvania, but trying to address concerns
4 that are common, not only to the commonwealth,
5 but to the other jurisdictions. And in that
6 light, the recommendations that I provided here
7 this morning addressed the broader concerns that
8 most of the jurisdictions have. I believe it is
9 appropriate, and I believe that NAS will be
10 happy to collaborate and partner with the EAC in
11 drafting a type of survey that would yield the
12 information that we believe is necessary to
13 address the questions, because I get them every
14 single day.

15 Two weeks ago, I was sitting before a panel
16 of somewhat angry state representatives and
17 senators that grilled me for an hour and 40
18 minutes, each body, to try to explain my budget,
19 which the bulk of its elections. Even though
20 we're getting a fair amount of dollars from the
21 Federal Government, everybody wants to know how
22 do we make up for the difference, understanding

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1 very clearly that our states and our counties,
2 for that matter, are in a very difficult
3 financial predicament. And when you have
4 competing forces of health and human services,

5 national security, while it is important, it
6 seems like we are falling off the top of the
7 totem pole when it comes to allocation of
8 dollars. That is why it is important to have a
9 better sense, and in all of these things, I am
10 hoping that it could be anecdotal and/or
11 empirical data that will give me and other
12 states a sense of best practices, and what is
13 working, and what is not working in other
14 states.

15 That collective reasoning would be very
16 helpful, I know, for Pennsylvania. I believe,
17 also for the other jurisdictions.

18 VICE-CHAIRMAN DEGREGORIO: Thank you.
19 Tony, having being a member of IACREOT since
20 1995, I am familiar with you too, and I know
21 that you have all shared information, best
22 practices yourself. You have a booth at your

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1 conferences to do that.

2 I know you have addressed in your testimony
3 that you welcome our clearinghouse functions,
4 that you have used the clearinghouse function of
5 the OEA prior to the EAC. How do we address
6 some of the friends in the local election
7 community who worry that Mr. Hailes, and his

8 organization, and folks out there in the
9 advocacy communities, might see a best practice
10 or something in our clearinghouse that is a good
11 idea and put pressure on them saying, how come
12 you are not doing this in your county, because
13 here, the EAC's put this up as a idea, but
14 you're not doing this. IACREOT folks are good
15 about taking information, but how do you address
16 the sensitivity of the local election officials
17 who feel pressured by something that we feel is
18 a good idea?

19 MR. SIRVELLO: As a former election
20 official yourself, you probably remember that
21 what we all do, and many times you can talk to
22 vendors, talk to advocacy groups. You can do

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1 whatever you want to do, and as soon as you
2 finish that conversation, you call someone else,
3 another local election official, and you say,
4 are you following this program, and you get
5 comments from your peers. And I think that's
6 what we would do in this particular case through
7 IACREOT. We would, on our website which we're
8 in the process of revising ourselves, perhaps we
9 could put in our website jurisdictions that have
10 adopted this type of program, and other members

11 of IACREOT could contact those election

12 officials.

13 I have found most of the election officials
14 in IACREOT are very, very progressive in their
15 thinking and able to, you know, adopt whatever
16 they think is going to make their job of running
17 elections run smoother and better. And most of
18 them are very dedicated to the profession.

19 VICE-CHAIR DEGREGORIO: Mr. Hailes, I
20 don't know if you want to comment on that.

21 MR. HAILES: Well, I think we should
22 emphasize that we attempt, of course, to work

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1 with local election officials before we
2 challenge them. We have had some very useful,
3 practical experiences in sharing information,
4 and also a willingness to go to bat for local
5 election officials to get more funding. We
6 often say, you may have not for you ask not, but
7 if you go and say yes, elections are important
8 and, yes, we need more money to do them
9 properly, and you have your local NAACP, and
10 League of Women Voters representatives going
11 together to push for additional funding, it
12 could be very successful.

13 CHAIR HILLMAN: Commissioner

14 Martinez.

15 COMMISSIONER MARTINEZ: Thank you,

16 Madam Chair.

17 I guess I want to start by just a comment.

18 Picking up on, again, what Commissioner Soaries

19 said, and also thanking Tony for your testimony,

20 and we have to be mindful that what works in one

21 local jurisdiction or even a state jurisdiction

22 does not mean it is going to work everywhere

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1 else.

2 I think as Congress passes laws like, as

3 you pointed out NVRA, and in particular HAVA,

4 where it reflects a strong consensus,

5 particularly with HAVA, and overwhelming

6 bipartisan representation, that at least in

7 certain areas, uniformity is perhaps prudent, or

8 a move toward better uniformity is prudent.

9 A point that you articulate, Commissioner,

10 here is that it is almost inevitable, given by

11 the way our society is today as opposed to how

12 it has been in the past. So I think it's an

13 important thing to keep in mind.

14 We're struggling to not upset the balance

15 that we have here between state rights and

16 federal intervention, and what we call

17 federalism, essentially. We're very mindful of
18 that on this end. We don't want to, by any
19 means, whether in the national clearinghouse hat
20 or anything else we're called upon to do under
21 the statute, that we not upset that balance, and
22 we consider it seriously on our end.

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1 So I will start with that opening comment,
2 and I will go to this; the EAC is called upon by
3 our governing statute to wear a couple different
4 hats, to act as a clearinghouse, which we have
5 had a very articulate discussion and very good
6 perceptive, but also on the other hand, to give
7 guidance in other sections of our governing
8 statute on how to implement some of the issues
9 that you and Secretary Cortes touched upon. For
10 example, statewide voter regular databases.

11 So, Mr. Secretary, what I think I hear you
12 saying when you touched upon that very issue is
13 that there is a way for the EAC to perhaps wear
14 both hats at the same time, and that is, as you
15 said you anticipate as a secretary, as somebody
16 trying to implement a statewide voter database,
17 that the EAC will prudently wear its hat to give
18 guidance where it can on how to best implement
19 these mandates, and yet at the same time, to

20 also give examples of how other states are doing
21 this, in the form of best practices, to help
22 inform your decision-making as you are trying to

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1 implement these mandates.

2 Any thoughts about that particular balance,
3 Mr. Secretary?

4 MR. CORTES: Thank you, Commissioner
5 Martinez, and you're right. I have to, however,
6 qualify my statements to know that in this case,
7 specific to your question of the roles as a
8 clearinghouse as well as providing guidance, I
9 have to qualify my answer by saying, now I'm
10 going to speak on my personal capacity for
11 Pennsylvania, because I understand it is very
12 difficult, as you have pointed out, to reconcile
13 state rights versus federalism.

14 Many of our colleagues, rightly so, are
15 concerned about the role of the EAC and the
16 possibility, slim as it appears right now, that
17 that clearinghouse function moves into guidance,
18 and that moves into something else,
19 decision-making authority, that eventually
20 touches a core with some states that feel very
21 strongly about state rights, but however, in my
22 personal capacity, representing Pennsylvania, I

1 believe that it would be very helpful to me. I
2 don't hide behind state, federal statutes, to
3 answer the concerns of the advocacy groups or
4 legislature saying, well, I am being pushed to
5 do so this way, so it is what is it, I don't do
6 it that way. I seek guidance of the proper
7 meaning of that word. I am learning. State and
8 local officials are learning to implement new
9 requirements that have come about as a result of
10 NVRA or the Help America Vote Act.

11 All of us are acting in good faith. When I
12 say all of us, state and local officials, but we
13 don't have all the answers. And, obviously,
14 none of us do.

15 I would welcome additional information
16 about the state registry because I get these
17 questions anyhow from, again, whether it is the
18 press, legislators, and they want to know how do
19 we compare to other states. And you do that
20 with the understanding that we're guided by
21 different statutes, state statutes, and
22 constitutions. But to put it in a nutshell, I

1 would welcome, and I guess to venture to say

2 that some of my colleagues, most of my
3 colleagues, would welcome working with the EAC,
4 not only in the clearinghouse capacity, but
5 providing guidance as an extension of the
6 clearinghouse.

7 COMMISSIONER MARTINEZ: I think that
8 actually captures my position as well. That's
9 really what I saw in your testimony, and that is
10 a way to capture this responsibility in a way
11 that is also under the hat that we have to wear
12 as offering guidance.

13 And I would also suggest that we can wear
14 both of those hats. I am speaking in my
15 individual capacity as well, and not for my
16 colleagues. I am speaking as one Commissioner.
17 There is a way that we can wear these hats and
18 truly not offend the notion that state and local
19 governments are traditional, and should continue
20 to be, by and large, the entity that administers
21 our elections, both federal, state, and local
22 elections. And that is an tradition that we

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1 have embraced, and I don't see anything in HAVA
2 that tries to upset that particular delicate
3 balance, quite frankly.

4 I think there is a way, in working

5 together, for this Commission to wear its hats
6 as giving guidance and as a national
7 clearinghouse, and not offend that traditional
8 balance that I think we all embrace, quite
9 frankly.

10 Tony, any thought, from a local
11 perspective, on the issue of the two hats that
12 this Commission has to wear? Because on the one
13 hand, under Title III of HAVA, it says, give
14 guidance, and on the other, it says, serve as a
15 national clearinghouse.

16 MR. SIRVELLO: I agree with what the
17 secretary said. I think most of the members of
18 my organization, and all of the local election
19 officials, we look at the Commission as
20 something new. We have never had a federal
21 agency, and I think most of our local election
22 officials look at you all as partners to us in

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1 trying to help us reach some type of uniformity.

2 I know at your presentation at our
3 conference in San Antonio last year, we had one
4 of the largest turn-outs we have ever had for
5 one of our seminars. We had members in there
6 who have nothing to do with elections because
7 they are interested in what you have to say.

8 I don't think any of us look at you as the
9 big, bad wolfe. I think it is very possible
10 that you can come up with these recommendations.
11 I know some of other members have adopted the
12 best practices. I see this as an ongoing,
13 working relationship that can only prosper.

14 COMMISSIONER MARTINEZ: One quick
15 comment. From my perspective, what the
16 Commission puts out for best practices, it is
17 intended, at least from my perspective, not just
18 for our partners that traditionally would be the
19 election administrators and state and local
20 officials but, also encompasses advocacy
21 organizations, community-based organizations,
22 civil rights, voting rights organizations. That

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1 is a useful tool, from your perspective, to go
2 out there and take a look. It entails a
3 reasonable and prudent approach on the part of
4 the advocacy group and not say I'm going to hold
5 every jurisdiction accountable in the same way,
6 in the same manner, because not everything plays
7 across from one jurisdiction to the other. You
8 have to use that information in a prudent
9 manner, but it is helpful in that perspective as
10 well.

11 Any quick comment?

12 MR. HAILES: Just from a personal
13 experience, I formerly was employed as a general
14 counsel for a federal agency that had a
15 clearinghouse function. It was not a regulatory
16 agency. And I realize how helpful this
17 particular Commission was in providing useful
18 reports. And as long as the Commission remains
19 credible and sensitive to the balance that you
20 pointed out earlier, the Commission can be
21 extremely helpful to both advocacy groups and to
22 officials. And I would recommend that you

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1 continue to think about how helpful the
2 Commission can be to voters and the groups that
3 represent their interests.

4 CHAIR HILLMAN: Secretary Cortes, in
5 the construct of the clearinghouse, one thing I
6 would like to do is anticipate any consequences,
7 favorable or unintended. And I am just
8 wondering if you can think of anything about the
9 clearinghouse function that could interfere or
10 get in the way of the communication between the
11 state election officials and the local election
12 officials?

13 MR. CORTES: As an attorney, I guess

14 I am always guided by providing disclaimers to
15 anything that I do, but I'll answer your
16 question in a broader context.

17 COMMISSIONER MARTINEZ: They're used
18 to it. They do it all the time.

19 MR. CORTES: Chair Hillman, your
20 question is one that is good, and I will expand,
21 if you allow me the answer to include in that,
22 how do we maintain a delicate balance and

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1 relationship between the state and local
2 occasions, but the state, local and advocacy
3 groups.

4 One point that Commissioner Martinez
5 alluded to was the fact that it is difficult to
6 reconcile practices throughout the nation
7 because we're guided by different states
8 statutes. Yes, there are some federal statutes
9 that we can argue, very strongly, trump
10 everything else, and therefore, the NVRA or HAVA
11 tells you to do something, and this is the only
12 way to do so.

13 The challenge to what we do, and this is
14 why I brought the subject of the disclaimers, is
15 to try to create some reasonable expectations
16 and do reality information to what the

17 information is expected to do. I am personally
18 troubled by the notion of the voluntary voting
19 systems guidelines.

20 Voluntary throws me off big time, and I
21 know you are following what the statute said,
22 but it is hard for me to go to the taxpayers and

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1 local election officials, and say, these are
2 just voluntary. You may or may not do them.
3 And that puts everyone in a position where I
4 don't think we will ever get to the pains of
5 Mr. Hails where you are going to be hold
6 everybody to the same guidelines because someone
7 may to use them and others don't.

8 I don't have a good answer, Madam Chair,
9 for your question other than to say that, like
10 you, I like to anticipate what may be the
11 possible outcomes and ramifications of my
12 actions. I think that these guidelines in the
13 best practices, what is not working has to be
14 presented with proper background information to
15 that says, listen, particularly for the advocacy
16 groups, don't go on Pennsylvania and sue them
17 left and right because they are not doing things
18 like Idaho. And I think that we strike a fair
19 balance between the groups, but that's my one

20 observation.

21 Quite frankly, I don't have the answer but
22 what I am thinking is that if we all part from

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1 the premise that may we're all trying to do the
2 best we can, we're trier to enfranchise as many
3 people as possible, I hope that we'll be able to
4 see eye to eye more on some of these issues.

5 Some people would argue it is an
6 impossibility because of human nature. I don't
7 know if I answered your question, Chair. I gave
8 you some general thoughts that I think,
9 hopefully, verbalize the complexity of what
10 you're asking, and what you try to do. I
11 understand, and I appreciate it.

12 CHAIR HILLMAN: Just by talking about
13 the complexity of it, you did answer my
14 question, to acknowledge that it's not going to
15 be an easy task to put together a clearinghouse
16 that everybody will see as a useful resource
17 versus see it as either something that they must
18 do, must follow.

19 As you said, it is voluntary. In some
20 instances, I have heard if only the voluntary
21 wasn't there, then the states could get more
22 done because they would say, we have to do this

1 with respect to dialogue with their own
2 legislature. So therein lies a big challenge
3 Tony. This is just for my information.
4 You referred in your remarks to the super
5 site polling location. Could you explain to me
6 what is a super site polling location? We super
7 size it.

8 MR. SIRVELLO: I first heard about it
9 in a meeting of the Florida Supervisor of
10 Elections, and I think the gentleman that is
11 actually advocating it is from Fort Collins,
12 Colorado. So I am sure Secretary Davidson would
13 probably know more about this than I do, but the
14 object behind it is to shrink polling places in
15 number of sizes, but increase the number of
16 voters who can go to this super site, thereby,
17 obviously, making it easier to get polling
18 officials on election day saving money, etc,
19 etc.

20 But as I said in my presentation, those
21 states likes Texas that are covered by Section V
22 of the Voting Rights Act, the Justice Department

1 might have a problem with asking a minority

2 voter who now drives three miles to a polling
3 site to go to a place that is now 15 miles away,
4 but it is one of the hot issues in the election
5 world that is being discussed today.

6 I know there's already been a bill
7 introduced in the Texas Legislature to talk
8 about it. And, like I said, it's kind of like
9 the topic dejour right now.

10 CHAIR HILLMAN: Okay. Thank you. I
11 have a question for Mr. Hailes, and then I'm
12 going to ask Tony if you would also respond
13 after he does, because it ties into a comment
14 you just made about what appears to be a good
15 idea might put a burden on a segment of the
16 voting population.

17 My question goes to how the advocacy
18 groups, and I use that term generously. When
19 people hear generously, they think left of left
20 or right of right. I'm talking about the full
21 spectrum. All the groups that care about
22 citizen and civic participation and get

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1 involved, in some fashion at any time of the
2 year, to encourage people to accept their
3 citizenship responsibilities to be registered
4 and to vote, but the dialogue between the groups

5 and the election officials, particularly at the
6 local level, seems to be uneven. And,
7 obviously, there is a lot of attention to it in
8 a presidential election year or in a state
9 that's got a hot governor's race, or a hot
10 mayoral race. That's not to discount hot local
11 races in some small townships that are equally
12 as important, but some groups are there all the
13 time.

14 There is a fixed chapter of the NAACP or
15 local League of Women Voters, or Urban League in
16 a particular place. So there is an opportunity
17 for ongoing dialogue all the time with the
18 election officials about changes in new ideas.

19 I think the burden is on both parties to
20 open up and maintain dialogue, not just on the
21 groups to go search something out, but on the
22 election officials to do regular meetings or

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1 whatever communication vehicles might be
2 necessary, but then some groups that organize
3 around the time of the election just for the
4 purpose of that election.

5 So when you talked about groups being able
6 to get information to understand what the voting
7 procedure is in that town, what is law, what is

8 just a procedure, what can be changed without
9 changing the law, so on and so forth, my
10 question is how do the groups that work on these
11 issues year round, year after year, how is there
12 able to be dialogue between those groups that
13 are here just for an election cycle and gone, so
14 there isn't the type of confusion that we saw in
15 2004 with respect to whether or not voter
16 registration forms were filled out properly, and
17 who took the responsibility for the delivery of
18 thousands and thousands of voter applications on
19 deadline day, a disservice to the people who
20 believed they were being registered to vote, not
21 even to address the issue of the potential for
22 fraud. And it's something that bothers me a

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1 lot, because unless both parties have an
2 understanding of what the other needs to
3 achieve, communication breakdown is always the
4 cause of problems.

5 MR. HAILES: I certainly agree, and I
6 think one of the great examples, and there are
7 several, but one great example of an ongoing
8 effort in dialogue among groups and election
9 officials is in Miami, Dade County.

10 The Miami, Dade Election Reform Coalition,

11 which actually has a website, actually meets
12 regularly among themselves. And it is a
13 relatively inclusive coalition that looks at
14 specific issues affecting each group, and they
15 work together to figure out what's going wrong,
16 and what could be better. And then they meet
17 with election officials and talk about the
18 discussions they have. They have been very,
19 very successful in reaching understandings with
20 election officials about how best to serve the
21 best interests of as many eligible voters as
22 possible. And I think that's just one great

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1 example that I would commend this Commission to
2 look into even more.

3 CHAIR HILLMAN: Okay. On the issues
4 of our materials being useful to the advocacy
5 groups, if we fall down on that, let us know.

6 One of the things that I found, I thought
7 we would hear more from advocacy groups about
8 the various things we were doing, and I was,
9 quite frankly, surprised. That either means we
10 were doing things to your satisfaction, or we
11 were doing things so badly that you didn't want
12 to take the time to comment, not you, the
13 groups, but I was surprised at how little we

14 heard from groups, even to send us copies of
15 their materials and reports to let us know
16 things that were going on.

17 MR. HAILES: Well, over and over
18 today, I have heard people talk how new the
19 Commission is. I did not, as my colleagues on
20 the panel, relied only on my personal beliefs in
21 coming to this hearing, but we did contact
22 groups in the field who just simply didn't have

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1 an understanding of who the Commission is, what
2 it does, and what is expected.

3 And so I think it will take some time
4 before people will really look to the EAC for
5 information, and then you will start to get the
6 responses, both critical and supportive, that
7 will make your jobs even better.

8 CHAIR HILLMAN: As they say, be
9 careful what I ask for.

10 MR. HAILES: That's right.

11 CHAIR HILLMAN: Tony, if you could
12 just comment on the issue of the dialogue
13 between election administrators and the advocacy
14 and voting groups, particularly those that don't
15 exist in the community.

16 MR. SIRVELLO: I found during my time

17 as a local election official that it was better
18 to be pro active instead of reactive. For
19 instance, when we put out an RP about our voting
20 system in Harris County, we had a 37-member task
21 force. We invited a member of every group that
22 had anything to do with elections, and

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1 therefore, it gave credibility to the process.

2 As far as the groups that come up at the
3 last minute, if you don't know about them, there
4 is really nothing you can do to plan for them,
5 but if you have done your homework and you have
6 touched base with the groups that are there all
7 the time, then I think whatever confusion they
8 might cause would probably dissipate, except for
9 the fact that the media always likes the bad
10 news more than they look the good news.

11 I want to make one comment. We were
12 talking about getting some kind of uniformity in
13 the law. During my time also as a local
14 election official, I found out that there is one
15 problem with getting election legislation
16 passed, and that is generally because the people
17 that are passing it have just been elected by
18 the prior law, and they are very reluctant to
19 change anything that might affect their

20 election.

21 It is a careful path you have to take to

22 get it through.

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1 CHAIR HILLMAN: Point well taken.

2 Thank you.

3 I want to thank the panelists, very much,

4 for accepting our invitation, for being here,

5 and sharing your words of wisdom. Thank you,

6 very much.

7 Commissioners, let me just remind you that

8 our April meeting will be held on April 26th,

9 and we will meet in Boston. And in the

10 afternoon, we'll have a hearing also in Boston,

11 and we'll be discussing the development of

12 guidance on the statewide voter registration

13 database.

14 Are there any comments before we close the

15 meeting? If not, a motion to adjourn is in

16 order.

17 COMMISSIONER MARTINEZ: So moved.

18 COMMISSIONER SOARIES: Second.

19 CHAIR HILLMAN: Thank you.

20 (Whereupon at approximately 12:00 o'clock,

21 p.m., the above proceedings was adjourned)

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CERTIFICATE OF COURT REPORTER

I, Jackie Smith, court reporter in and for the
District of Columbia, before whom the foregoing meeting was
taken, do hereby certify that the meeting was taken by me in
shorthand at the time and place mentioned in the caption
hereof and thereafter transcribed by me; that said transcript
is a true record of the meeting; that I am neither counsel
for, elated to, nor employed by any of the parties to the
action in which this meeting was taken.

JACKIE SMITH,
Court Reporter in and for
The District of Columbia

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