United States Election Assistance Commission
Public Meeting

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Held on Thursday, September 18, 2008

VERBATIM TRANSCRIPT

The following is the verbatim transcript from the meeting of the United States Election Assistance Commission ("EAC") held on Thursday, September 18, 2008. The meeting convened at 9:01 a.m., EDT. The meeting was adjourned at 3:53 p.m., EDT.

PUBLIC MEETING

CHAIR RODRIGUEZ:

Good morning. Welcome to the September 18th public meeting of the U.S. Election Assistance Commission. I'm Rosemary Rodriguez, the Chair. And please join me in the Pledge of Allegiance.

[Chair Rodriguez led all present in reciting the Pledge of Allegiance.]

CHAIR RODRIGUEZ:

Madam General Counsel will you call the roll, please?

COUNSEL HODGKINS:

Thank you, Madam Chair. Members please respond by saying "here" or "present" when I call your name.

Rosemary Rodriguez, Chair.

CHAIR RODRIGUEZ:

Here.

COUNSEL HODGKINS:

Donetta Davidson, Vice-Chair.

VICE-CHAIR DAVIDSON:

Here.

COUNSEL HODGKINS:

Gracia Hillman, Commissioner.

COMMISSIONER HILLMAN:

Here.

COUNSEL HODGKINS:

Madam Chair, there are three members present and a quorum.

CHAIR RODRIGUEZ:

Thank you very much. And the agenda is in our notebooks. Is there a motion to adopt?

COMMISSIONER HILLMAN:

So moved.

VICE-CHAIR DAVIDSON:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt the agenda. All those -- any discussion?

COMMISSIONER HILLMAN:

One correction. No discussion, but a correction. It's only a word change but it has implications. On page two of the agenda at the top, "Consideration of Draft Working Groups Policy," that's supposed to be formerly, f-o-r-m-e-r-l-y, not formally.

CHAIR RODRIGUEZ:

So there's a typo in the agenda. Any other comments or discussion? All those in favor of adopting the agenda indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

We have an agenda.

I'd like to welcome everybody to the meeting today. It's a long meeting. And in preparation for Election Day 2008 we've had a series of workshops. Today is about voters and empowering voters. But the length of the meeting is particularly long because

we had a number of business items to attend to this morning. And so we'll work through our business this morning, a little bit after our lunch break and then get into the workshop, which I'm quite excited about.

I have no other remarks other than to flag an issue that arose late yesterday that Mr. Wilkey will cover. And in this context of empowering voters it's important that states have access to Federal Social Security databases, and so Mr. Wilkey in his report will discuss the late breaking issue. And so we'll cover that.

Okay, on to old business. We have the minutes of the July 21st meeting and the August 5th meeting before us, and so I guess we'll take them one at a time. Is there a motion to approve the July 21st minutes?

VICE-CHAIR DAVIDSON:

So moved.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to approve the July 21st minutes. Is there any discussion or corrections or comments? Seeing none, all those in favor of adopting the July 21st minutes indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

The July 21 minutes are adopted.

We'll now turn to the August 5, 2008, minutes. Is there a motion to adopt the August 5th minutes?

COMMISSIONER HILLMAN:

So moved.

VICE-CHAIR DAVIDSON:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt the August 5th, 2008, minutes. Are there any corrections or discussion? Seeing none, all those in favor of adopting the August 5th minutes indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

The minutes are adopted.

Now Mr. Wilkey may we have your Executive Director report?

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair. We want to welcome everyone to our meeting. We're in the homestretch, just 47 days out from the election and we're busier than ever preparing for a high turnout. Registration deadlines in the states are quickly approaching and there's voters who may be looking in on this Website to verify their registration status now.

Under Election Administration, this week we sent out our new Voters Guide to Federal Elections to each jurisdiction in the country. The Guide covers what every citizen needs to know to successfully navigate the Federal election process. The Guide also has been translated into Spanish, Chinese, Japanese, Vietnamese, Korean and Tagalog. The translated versions will be sent to

election officials in jurisdictions covered by the language assistance program provisions of the Voting Rights Act.

We will also be releasing our Voter Information Website Study in the coming days. The report details key points that make voter Websites effective, and provides practical guidance on developing them. The report will be available shortly on our Website, along with a fact sheet summarizing the report.

Under HAVA funding we recently dispersed FY 2008 requirements payments to the States of North Dakota and Colorado. We are currently processing payment requests for the States of Indiana and Montana. We recently sent a letter to states updating them on the status of FY 2008 requirements payments. The letter is available on our Website and, of course, our Website is eac.gov. We also issued two additional Funding Advisory Opinions: FAO 008-006, and I think the staff does this on purpose to make me tongue-tied, concerns how funds acquired through the sale of HAVA-funded voting equipment may be used, and FAO 008-007 addresses questions involving state grantee and subgrantee decisions about voting equipment. All funding advisory opinions and instructions on how to submit a request are available on our Website.

Under Research, we are awaiting final OMB approval of the Election Day Survey instrument. Templates that will be used to collect the Election Day Survey data are being developed, and will be provided to participating states within the next several weeks.

Under NVRA, we recently updated the National Voter Registration Form to reflect changes requested by Nevada. The updated form is posted on our Website.

Under Testing and Certification, we posted two pieces of correspondence for our lab accreditation program, which includes a letter from EAC to SysTest Labs, and a letter from NVLAP to SysTest Labs.

We had a number of tally votes taken since the last meeting, and the Commission held eight tally votes and all were unanimous. They include: Advisory Opinion No. FAO 08-006 on use of revenue from the State of HAVA-funded equipment to finance equipment or other items provided for in Section 101 and 251 of HAVA funds, Advisory Opinion No. FAO 08-007 on requirements for reporting and accounting for the disposition of equipment purchased with HAVA funds, Federal Register publication of changes to HAVA State plans, updates to Nevada State instructions on the National Voter Registration Form, 2008 HAVA requirements payments to State of North Dakota, Federal Register publication of changes to the HAVA State Plan in Georgia, adoption of the Voter Information Website Study, publication of final rules on the Freedom of Information, Privacy Act, Government in the Sunshine, testimony by Commissioner employees relating to official information and production of official records in legal proceeding, standards of conduct of Commission employees, and nondiscrimination on the basis of handicap in programs or activities conducted by the U.S. Election Assistance Commission.

Under Website updates, we now offer RSS (Real Simple Syndication) feed, allowing users to be automatically alerted each time we post an update to our homepage. And that's important because, as I've said many times, we update that homepage just about every day. Also remember to check our Website for recent Commissioner statements. Chair Rosemary Rodriguez recently posted two statements concerning voter registration and Commissioner Hillman also recently issued a statement on EAC's voting system certification process. And finally, we recently compiled a list of state voter registration deadlines for the November elections and uploaded it to our Website. The chart contains each state's registration deadline and mailing address for the voter registration form. It also includes a link to each state's Website for additional information.

And as our Chair mentioned at the beginning of the meeting, we found out late last evening through our Secretary of State's Office in California that they have been notified or have come across a directive from the Social Security Administration that its annual national computer center annual building shutdown will be October 10th through 13th and that will mean that annual online system services will be shutdown as well. Now for those of us in the registration business or for all of the states who have registration deadlines that may occur on that weekend, they will be trying to access that system through the Department of Motor Vehicles to verify voter information. And so our Chair will be sending a letter to the Social Security Administration with copies to the American Motor Vehicle Association and to the National

Association of Secretaries of States and the National Association of State Election Directors urging the Social Security Administration to make this service available during this weekend. This is a critical weekend for many states who have voter registration deadlines, and we are hoping that they will understand that it's absolutely necessary in order to get voters on rolls that that information be able to be available. So we are working with the National Association of Secretaries of States and they through AMVA, the American Motor Vehicle Association, will be working and we're hopeful that alerting the Social Security Administration to this oversight will be taken care of.

That, Madam Chair, is my report. Thank you.

CHAIR RODRIGUEZ:

Thank you. Are there any questions or comments? Commissioner Hillman, I think you issued another statement since the last meeting on -- it was kind of a checklist of voter preparation.

COMMISSIONER HILLMAN:

Oh, I did. It wasn't so much a statement, but I provided a checklist, what would be called an Election Day readiness checklist, that provided very simple things that organizations and individuals could do to see how their local election official is preparing for Election Day; everything from how to check the status of voter registration to polling site locations, number of machines allocated per polling place. The kinds of things that would address the anxieties we hear about. Will there be long lines? Will I show up and find out I'm not registered? Will there be sufficient poll workers? How can we help identify and recruit poll workers? And as well as

contingency plans, making people aware that the contingency plan should be transparent and available to the public so that if there is really bad weather or some other catastrophic event people will know what kind of decisions will be made as to whether or not elections can move forward.

So thank you for remembering that.

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair, because I did miss it. And we have been using that list, as a matter of fact, as media have been calling saying, “What should we be looking for?” So the list was very helpful...

COMMISSIONER HILLMAN:

Good, thank you.

EXECUTIVE DIRECTOR WILKEY:

...and I’m glad that you put it out there. Thanks.

COMMISSIONER HILLMAN:

Mr. Wilkey I do have one question just for clarification, and I want to make certain that -- in the early part of your report you reported on the release of our Voter Information Website Study and I want to make sure that is the study that we adopted in August I believe it was.

EXECUTIVE DIRECTOR WILKEY:

It’s the same, yes.

COMMISSIONER HILLMAN:

It’s the same one? Okay. So what’s happening now is that it’s been published and will be released and available to the public?

EXECUTIVE DIRECTOR WILKEY:

Right.

COMMISSIONER HILLMAN:

Okay, thank you.

CHAIR RODRIGUEZ:

Very good. We also attended a UOCAVA conference sponsored by Pew earlier this week, a number of the research staff, and it's pretty inspiring to see the level of community interest in resolving some of those issues that our uniformed and overseas voters face. And I'm hopeful that we can continue EAC participation in those problem-solving discussions.

Okay, next on the agenda is Maintenance of Effort. Tell me if you've heard this before. We have been -- some of us have been struggling with this issue for several months now. And we actually had the highly anticipated meeting with the Office of Management and Budget earlier this week, and we were assigned a buddy in the Federal system and that is someone who has a lot of experience in funding administration, mostly in grants administration. And so I think a number of obstacles to a decision have now been cleared away.

I can't fault the Commission for struggling to achieve the confidence in this decision that some of the staff already have, and that is I think what we're supposed to do. We're supposed to examine every decision we make from every possible aspect. And so I know there might be frustration on the staff side and an eagerness for the Commissioners to arrive at their same level of confidence, but again we have a different set of responsibilities as Commissioners or a different way of processing things perhaps.

So what we've done is -- Commissioner Hillman has done, is propose that we agree on the principles -- on several principles. And we're not ready to adopt them, but I'd like perhaps Commissioner Hillman to share her principles. And I don't know, Madam General Counsel, if you want to brief the public on the OMB meeting in a more thorough way or not. Is there interest in that?

COUNSEL HODGKINS:

Sure.

COMMISSIONER HILLMAN:

I think that would be helpful, useful. And thank you, Madam Chair. I think it probably would be more useful if we had the briefing first and then I could address the principles and statements of facts that I believe have come out of our deliberations.

COUNSEL HODGKINS:

Thank you, Madam Chair. As you mentioned earlier, the meeting was following a request that you had made, first on May 21st and again on June 23rd, to meet with the Office of Management and Budget, and specifically you had requested that they answer five questions. Those questions were: Are the payments for states authorized by Sections 101, 102 and 251 of the Help America Vote Act Federal grants? Second question: If not grants, what type of Federal financial assistance are the payments? Third question: Are the payments to states subject to the provisions of OMB circulars A-87, A-133 and the Common Rule? Fourth question: Are the circulars enforceable against the states? And five: If the circulars are not applicable, must EAC develop cost principles and administrative and audit requirements for its programs?

In attendance at the meeting were, not only persons from the OMB Office of Grants Management, but also folks from the OMB Office of General Counsel, as well as the Treasury branch which handles our appropriations request that goes to Congress. In addition, there was at least one representative there from the Office of Housing and Urban Development, who has, I think she said, over 30 years of experience in Federal grants.

In response to the first question, the Office of Management and Budget orally gave us the advice that the payments for states authorized by Sections 101, 102 and 251 of the Help America Vote Act are in fact Federal grants. That, of course, obviated the second question, and in response to the third question, they said that, in fact, because these payments are grants that they are subject to Circulars A-87, A-133 and the Common Rule. I don't know that they specifically answered the other two questions. Five obviously would have been obviated by the fact that they said that the circulars were applicable. I don't recall there being a discussion of the enforceability of the circulars against the states. However, they did discuss the fact that -- or we did discuss the fact that the states were informed of this at the time that they received their funds and that that letter/agreement served as a binding contractual agreement, if you will, that the states agreed to abide by those terms. So I don't know that they directly addressed the enforceability in and of themselves, but through the concept of the grant agreement.

CHAIR RODRIGUEZ:

Madam General Counsel can you just remind us of the disbursements, the fact that GSA did the initial disbursements and sort of, see facts around the actual disbursements?

COUNSEL HODGKINS:

Sure. Let me just take a step back and say that there are three funding programs -- or three major funding programs under the Help America Vote Act. The first is found in Section 102, and that is from the public law section of the Help America -- I'm sorry 101 from the public law section of the Help America Vote Act. That funding is referred to as early payments or early money. It has the most broad use of any of the funds. Those funds were distributed by the General Services Administration as the predecessor agency, if you will, to the EAC. EAC did not exist at the time that these funds were distributed to the states. The states made certifications directly to the Administrator at GSA and GSA distributed those funds directly to the States based upon those certifications.

Similarly, the second funding program, Section 102, those funds have the most restrictive use and can be used only for the replacement of punch card and lever voting machines that were in use in the states during the 2000 election. Again, states made certifications directly to the Administrator at GSA as to how many qualifying precincts, that is, how many precincts in their state, had punch card or lever voting machines in the November 2000 election and how many they intended to replace. And GSA distributed funding on a per polling place allotment directly to the states, again prior to the existence of EAC.

Now the 251 funds, or the requirements payments as they are called by the Help America Vote Act, are for the uses that are prescribed in Title III. States may use them to purchase voting systems that comply with Title III to establish a state wide voter registration database, to establish a system of provisional voting to provide certain required voter information at the polling place on Election Day, and to comply with the verification requirements in Section 303 of the Help America Vote Act. In addition, once the States have either met those requirements or certified to us that they intend to use a small portion of the funds, what is called the minimum payment, they may also use those funds to improve the administration of Federal elections. Those funds were actually distributed by the Election Assistance Commission. Certifications through the form of a single-sentence certification, as well as state plans, were submitted to the EAC and EAC distributed those funds after having reviewed those state plans and published them in the Federal Register for a period of 45 days.

CHAIR RODRIGUEZ:

Commissioner Davidson?

VICE-CHAIR DAVIDSON:

Just a question. Did they turn over all the records of their distributing of funds to us once the EAC was formed?

COUNSEL HODGKINS:

I believe that we have been able to obtain, at this point, all of the records on the distribution of the Section 101 and 102 funds.

VICE-CHAIR DAVIDSON:

So we have copies of the letters that they sent out?

COUNSEL HODGKINS:

Yes, ma'am.

CHAIR RODRIGUEZ:

I actually asked, and yesterday staff provided me with kind of the first folder and that was I think Alabama. So I'll share those copies.

VICE-CHAIR DAVIDSON:

Okay.

CHAIR RODRIGUEZ:

Sorry I didn't earlier.

Okay. Are there anymore questions for General Counsel? Otherwise, Commissioner Hillman, why don't you share with us your proposal.

COMMISSIONER HILLMAN:

I will. And before I do that, I just want to say to the General Counsel in reference to that question number four about the enforceability of the circulars, what I recall the OMB official saying, as well as the official from, is it Housing and Urban Development, that the answer to that would necessarily flow from the fact that the circulars do apply. So, you know, we didn't get into a lot of debate about that, they said, because obviously, if the circulars apply then the enforceability flows from that as well.

CHAIR RODRIGUEZ:

I guess I would like to make two points. OMB proposed that we meet, but I would have taken a letter. A written response might have come sooner than four or five months after I requested the information. So I'll just put that on the record.

The other thing was, that the fact that they created a relationship with us, with another agency, I don't think means they're necessarily tired of the EAC but really recognize that this buddy process could help the Commissioners at least get up to speed on the whole Federal process. Of course, Commissioner Hillman is more familiar with it than former Commissioner Hunter and I were a year ago and so it is -- I'm optimistic that this new buddy relationship will really help us come along.

COMMISSIONER HILLMAN:

Okay. What I'd like to recommend, Commissioners, is, now that we have compiled pretty much all of the factual information that we have been seeking, and Madam Chair, I agree with all your statements about the deliberation process, I know that it probably has also been equally frustrating to states with respect to, when are they going to get clear guidelines from EAC advisory definitions direction about Maintenance of Effort, and so they should at least appreciate today's discussion as the first step in that direction.

There currently are two proposed changes to our existing policy; one that is currently proposed under your name, Madam Chair, and one that I had proposed, trying to clarify how and when Maintenance of Effort applies. And I think, in light of the conversations with the Office of Management and Budget, with the information that we received, with our ability to utilize the expertise from the Department of HUD, that what we could do is take a step back and make sure that the three of us agree as to what the principles and the facts are behind MOE as regards the HAVA funds. And then, once we know we're in agreement on those,

revisit our existing policy to make appropriate amendments as would address the new information we receive, that may or may not be totally reflected in our existing policy, as well as the concerns that we've heard from states. Now obviously, the big concern is, they were hoping MOE wouldn't apply to counties and units of local government. And we don't write the circulars and the law, we just have to follow it. But I am sensitive to the concerns that states have, about how to do that documentation, how the local units of government can do the documentation, particularly if they're expected to go back in time to 2000. And one of the efforts I was trying to make earlier, was to say that it really is the responsibility of the states to make certain that the sub-awardees, the subgrantees, the counties and units of local government that have received funds from states, do the kind of documentation/certification that they are implementing Maintenance of Effort that would satisfy the state's requirement. And I think that's what we've said pretty much recently; that the documentation has to be there. There has to be some kind of a documentation, but since it's the state that's sub awarding the funds that that would really be their responsibility. I think that we really could benefit from some type of a discussion, if you will, with a few individuals to talk about what that documentation might be. Some states already have it. Some counties have already done it. Some state plans are very specific about Maintenance of Effort on the part of counties and local units of government. Other states are vague. And, you know, we know there's a solution. There are many ways to skin a cat and we know the solution is out there. So that is not the focus. I would hope that

states would not continue to be anxious and guessing at what EAC may or may not be going to do. We are not imposing ourselves in their record keeping. We are simply implementing our responsibility to make sure that the records are there, that when Congress asks us about Maintenance of Effort we can point to policies and advisory that indicate that we are doing that.

So, in that respect, I just sort of went through the existing policy, I reflected on the discussions that we had with Office of Management and Budget and I came up with one, two, three, four, five, six, seven what I call principles. They might be statements of fact. And I'm not proposing them necessarily as something that we would adopt or vote on today but something that if we are in agreement on them, if we add one to this or however we do this, that this would be our guide through our process to revisit the existing advisory on Maintenance of Effort and make whatever amendments. I think that we have a little bit of a tricky time issue in that we don't want to go too far into this calendar year without getting started on this because we are sending out more funds. states to have to get their record keeping together and know what's expected of them.

So, the first principle would be, and I'll read it for the record, that we acknowledge and understand that HAVA requirements payments are grants and the states are the grantees. I'm seeing something coming here so...

EXECUTIVE DIRECTOR WILKEY:

I'm just passing out -- some of the staff was able to put their hands on the original letter that went out from GSA to the states when

they originally sent this money out and also the letter that we sent in 2004 reminding them again...

COMMISSIONER HILLMAN:

Okay. All right, so it's not germane to…

EXECUTIVE DIRECTOR WILKEY:

Right.

COMMISSIONER HILLMAN:

Okay. The second would be the acknowledgment that states may sub award or sub grant, depending on the terminology, I think our current advisory uses the term subaward, HAVA funds to units of local government -- counties and units of local government, and those units of local government may also subaward funds. Now that is something that we really haven't thought about, and the reality is, I think we don't know whether counties have subawarded HAVA funds to cities or townships within those jurisdictions. So I think we, at least, have to make it clear to the states that no matter how far down the HAVA funds have flowed there is an MOE requirement. Maintenance of Effort is a requirement of HAVA Section 254(a)(7). States are responsible for Maintenance of Effort under HAVA Sections 253 and 254(a)(7). State plans shall contain a description of the state's Maintenance of Effort, and that's required under HAVA Section 254(a)(7). States are responsible for making certain that subawardees document Maintenance of Effort. Under Federal circulars, grant requirements, such as Maintenance of Effort, pass to counties and units of local government with the subaward of funds. And EAC has a responsibility to provide guidelines, definitions, direction, explanations, monitoring and

oversight to make certain that the MOE requirements, the Maintenance of Effort requirements, of HAVA are being properly implemented by its grantees, which are the states.

And so, you know, I would just put that out there for brief discussion now to see if we are in agreement that that is the information that we have compiled. There is nothing in this that EAC has done on its own. We have just gathered the information, been informed by others, and it appears that those are the facts behind what our MOE advisory should be.

I would also just add, in addition to that, that most States and local jurisdictions who inquire to us, are good about asking us if we have existing policies and advisories on various things rather than assuming we do or don't. And we should certainly encourage them to do that. One of the things that the EAC is undergoing, as a part of its administrative organizing work, is to put in one place all of our policies and advisories and everything else that we've done, so there's like, one-stop shopping and people don't have to assume whether there is or there isn't. I like to caution people that just because you haven't seen it doesn't mean it doesn't exist. And so, you know, we need to do a good job of being aware of what we've already got as a policy and when we work on another one that we're reflecting back on that as well.

EXECUTIVE DIRECTOR WILKEY:

Madam Chair?

CHAIR RODRIGUEZ:

Yes.

EXECUTIVE DIRECTOR WILKEY:

There's also another element that I'd like to point out, as well, while we're on this discussion, since it involves the responsibility that I have in my area. As you know, when we do an audit and these issues are raised by the Inspector General, it is my responsibility, in the first instance, to try to work with the states to resolve these issues. And we're very -- and I think you know from some of them that I have bounced to you on appeal, that we work very carefully to try to resolve these things, to try to work with the states in making sure that they can gather this information. So, you know, in addition to what we're trying to do on the front end, making sure that we have this information, I think it's important to realize that when we do uncover some of this, that we work very hard to try to resolve it at the state and have been successful in doing that all along. So I'm hopeful that the states will understand that this is a complete process that we go through from the beginning with our guidance and our advice to the very end when we work to try to resolve these issues.

COMMISSIONER HILLMAN:

And I think there's another principle that we probably are in agreement on, I think, and that is, it is not EAC's intention to create a process that would place undue burden on states and localities to come up with documentation they may not have. And so, that is not the issue at all. And, that while EAC will accept responsibility for perhaps not earlier being able to provide clear guidance and direction on this issue, I would hope that the states would also acknowledge that they have a responsibility to put something in place; that while it may not be recreation of old records, it certainly

could be some written assertion on the part of the local units that they understand Maintenance of Effort and what they have to do under that requirement. But I just think that -- and I'm sure the states know this. I mean I understand lobbying and I understand pushback, but I don't know how we can make it more clear to states than we did at our discussions in NASED and in recent communications, it is not our intention nor our desire to create systems that cause undue burden. And if that's what they're feeling, then that's a discussion we should have, you know, rather than people operating on an assumption of what our intentions are.

CHAIR RODRIGUEZ:

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

I think, at the meeting one of the things that I was pleased that they said is, this could be -- it doesn't have to be complicated, it can be simplified. That we -- if their state plan has already been in for this new money that's coming in or they've already been certified to receive their money, even if they gave us a letter of certification how they would move forward in giving us some details just to help in the future. But I think the biggest thing about that I am pleased, that Commissioner Hillman is willing to move forward in getting some of the states in, some of the folks in to work with us on trying to develop a very simple format, suggestions of what can be done so that we can get that out to other states that might be struggling in that area and not quite sure how to handle it. So I think that there will be a lot information come out. As we know, sometimes we try to do things and we get tunnel vision, but with input from

them I think that it will make their lives far easier and our IG's life far easier, as well as our own.

CHAIR RODRIGUEZ:

I think I would like some staff support in framing this discussion and perhaps request Mr. Wilkey that they go through -- we've got a pretty extensive record of comments on the various proposals, and perhaps we could get some sort of analysis of these basic principles in how they stand against the various comments. And like Commissioner Hillman suggests, look for areas of agreement, because I do think that this is, while it's not a negotiated process, it's one that we're going to have to bring the states with us as we develop -- ultimately they're going to have to demonstrate to the EAC that they are not supplanting Federal funds with HAVA funds. And so, I wonder if we could get that in the next couple of weeks and set an objective for a decision within the calendar year.

EXECUTIVE DIRECTOR WILKEY:

I believe that's possible and would be glad to work on that, Madam Chair, because I think, you know, we have a starting point. We have on the books our two advisory opinions that we've already issued in that area and I think that's the starting point, together with the information, I think this puts it all in perspective, the handout that we have from Commissioner Hillman. So I don't see any problem in doing that.

CHAIR RODRIGUEZ:

And now there are no audits currently out in the field, except for Oregon which requested one?

EXECUTIVE DIRECTOR WILKEY:

Right. The IG shuts down audits about this time because we recognize the fact that states are preparing for elections, so there's none ongoing now. We do have a couple that might be pending in resolution with some of these issues, but I'll have staff take a look at that and I'll get that out to you.

CHAIR RODRIGUEZ:

Is that an acceptable way to go?

COMMISSIONER HILLLMAN:

Certainly. Certainly. I would -- and trust me I will be out there -- I'm going to nudge that we move on this diligently and not let it get sidetracked, so that we look up in the middle of November and find out time has gone by and we haven't made any progress. Certainly we wouldn't want to distract the election officials before November 4th, but there's a lot of work EAC can do internally, so that as soon as the elections are over and certified we can tee this off to move as quickly as possible. We don't have a November meeting as I recall correctly, but we do have one in December and it certainly should be an item that we're discussing at our December meeting.

CHAIR RODRIGUEZ:

And I'm going to NASED, which is the National Association of State Election Directors, I think on October 4th. So I can take whatever basic information we have assembled at that time to that meeting.

COMMISSIONER HILLMAN:

Madam Chair, just as a procedural thing, I'm not sure that the two replacement proposals are both on the table. I think yours might be and I would have to go back, in future minutes, but I know that mine is not officially on the table. So I'm wondering if, and I'll sort of look

to the General Counsel to see if there's some indication that we shouldn't just formally table both of these, not with a specific date but just put them on the table. If they ever come up again, fine. If they don't, they just stay on the table until we're ready to dispense with final action.

CHAIR RODRIGUEZ:

Well I believe "B" is tabled.

COUNSEL HODGKINS:

I believe both items had been laid on the table at previous meetings.

COMMISSIONER HILLMAN:

Have they?

COUNSEL HODGKINS:

Correct.

COMMISSIONER HILLMAN:

Okay.

COUNSEL HODGKINS:

We can certainly check the minutes, but that's my recollection that both items have been brought up in previous agendas and have been laid on the table.

COMMISSIONER HILLMAN:

Formally tabled?

COUNSEL HODGKINS:

Right.

COMMISSIONER HILLMAN:

Okay.

CHAIR RODRIGUEZ:

Let's keep them on the table just as you recommend.

Okay, then the next item on the agenda is Commissioner Hillman's final policy for Notice and Public Comment.

COMMISSIONER HILLMAN:

Okay. Let me just summarize where EAC is with its Notice and Public Comment Policy. At our public meeting on August 5th the Commission voted unanimously to adopt the Notice and Public Comment Policy. It had already at that point been through public comment and we had made the adjustments. Following the August 5 vote the Notice and Public Comment Policy -- we also voted to publish the final version in the Federal Register for final comment, and that was done. We received one comment against the Notice in the Federal Register and that came from NASED, National Association of State Election Directors, yesterday. And they were requesting clarification on the policy formation process. They didn't offer any substitute language. The question they asked was whether the policy would limit the ability of Commissioners to consult experts that could assist in the development of sound policy. And of course the answer is, no, the policy doesn't limit that." The Commissioners and staff and everybody else have to do broad consultation as they are thinking about issues when they are developing recommended policy. And so, I think that we can satisfactorily answer that question directly to NASED. The section of the policy they're talking about was, if it is learned that when a policy -- when a draft policy is ready for publication for public comment, if it has gone to other parties in advance of that publication, then the period of time for public comment would be

extended so all parties have equal time to comment. It had nothing to do with input that people receive in the development of a policy.

So I recommend that we move to adopt the final version of the Notice and Public Comment Policy as was published in the Federal Register.

VICE-CHAIR DAVIDSON:

I'll second it for discussion.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt the policy for Notice and Public Comment. Discussion?

VICE-CHAIR DAVIDSON:

As you know, when this first came about, I asked questions of this area, Commissioner Hillman. And I still am uncomfortable because the way it's written, like they said, it looks like it needs clarification to be completely open about what the intent is. And...

COMMISSIONER HILLMAN:

Could you specify for me the language that you are...

VICE-CHAIR DAVIDSON:

Well my first thought, even before I got here today -- and you made this statement and I see the NASED information -- my first comment was that I was in favor of just removing Section C because I felt like at times -- there is so many times that we need to contact OMB, we need to contact possibly the Hill, you know. I can't understand why we would cut out some of those people, in even the draft and say, "Would you review this to see if there's any problematic areas of it?" You know, we may or may not. And then I just -- it seemed like to me at times the way it's really proposed,

"Under this policy, no draft or proposed policy or rule shall be released outside the party prior to the time that it is posted for public comment." When is it a draft? I mean we can take it to a working group and say, "This is what we're working on" and we always put draft on everything. So that concerns me. And obviously I don't want to shut out the public's ability to help format some of our materials that we're moving forward with, our policies.

COMMISSIONER HILLMAN:

To answer one of your questions first, page one of our proposed policy under definitions gives the definition of "outside party" and it means outside parties shall not include Federal government executive branch or independent agencies. Now I am disappointed that we would have gone this far and not have gotten suggestions about language for clarification and that this policy would have to be held up for that. The attempt was to make sure that the policy is fair and equitable. I'll use myself as an example. If I come up with a draft policy and it has gone through all the internal vetting and feedback and we have agreed at this meeting that the policy is ready to be published in the Federal Register and on our Website, that I should not that night send it out to ten non-governmental organizations before it's published. So this section was meant to address the period at which this Commission votes that the draft policy is ready to be published. So if there is some simple language that -- if that clarification helps and there's some simple language we can come up with, I would request that we work to do that today rather than sending this back to the drawing board. But it really would be a violation of the spirit of Sunshine and openness

if we vote today to publish a draft policy and then I go out this afternoon and send it to a bunch of people who have an opportunity to look at it before the general public and other constituencies do. And so that is the intent of what is Section V C “Equal Ability to Comment.”

VICE-CHAIR DAVIDSON:

And I’ll have to apologize because you did add the definition of “outside parties,” but the way I understand that it doesn’t include Congress?

COMMISSIONER HILLMAN:

No it doesn’t, which means that we should not – well, I’ll let the General Counsel explain because I may not give an appropriate explanation.

COUNSEL HODGKINS:

The way that “outside party” is defined in this proposed policy, it would not -- “outside party” would include members of Congress. So, as proposed the policy would prohibit a Commissioner or staff member from circulating to members of Congress prior to the time that it is published for public consideration by the entire public a proposed policy.

CHAIR RODRIGUEZ:

I very much understand your intent here, Commissioner Hillman, in that equal access to comment is ability to comment and no unfair advantage or -- it’s a very important principle. And I think what’s perhaps hitching people up is the first sentence of C, and I just wonder if you remove that first sentence your intended purpose of

not giving unequal access to one party over another could be achieved.

COMMISSIONER HILLMAN:

Well, quite honestly, if I read it without that sentence, if it just says, "If it is determined that a proposed policy was released to an outside party prior to the beginning of the public comment period," I'm not so sure that that addresses the question that I hear Commissioner Davidson raising. So I just wonder if we specify in here once the Commission voted to post the draft policy.

VICE-CHAIR DAVIDSON:

That I think would definitely help. Counsel?

COUNSEL HODGKINS:

Well the other thing that I was going to add is that as I read this, and I believe as I understand the author's intention here, it certainly would not prohibit members of this Commission from having conceptual discussions with any members of the public, Congress, what have you. What it would prevent is the circulation of a document which this Commission has voted to propose as its proposed policy prior to the time that it is published for the entire public to consume and to comment on.

COMMISSIONER HILLMAN:

Perhaps if we could just -- if I could ask if we could just put this -- raise this after our break. And I'll take a few minutes for the General Counsel to come up with a couple of words that we could insert in there to address this.

VICE-CHAIR DAVIDSON:

That would be great.

CHAIR RODRIGUEZ:

Okay, then, laying that over until perhaps the break in about an hour, we call on Commissioner Hillman again for consideration of the draft Working Group Policy formerly known as draft policy for Joint Partnership Task Force of EAC and State Election Officials regarding spending of HAVA funds.

COMMISSIONER HILLMAN:

Okay. This policy came up initially from the Maintenance of Effort discussions where it was realized that either a provision of the Help America Vote Act or some advisory that EAC was considering as to whether or not it should issue, that we could benefit from input from other parties. And I don't mean the lobbying individual letter kind of input, but a discussion. And so, I initially started proposing this as a policy that would have been for the spending of HAVA funds, and we all agreed that that was a good idea. And part of it was to also, as we go through this, broaden the circle of people we are able to bring to the table to have discussions that we would reach within the community of, you know, non-governmental organizations and the thousands of state and local election officials. We certainly are fortunate that we have a wealth of talent throughout this country that we can draw on to help us formulate our advisories and other policies. But as we were working on the drafting it became clear that we shouldn't so restrict the policy that if an issue that did not relate to HAVA funding came up and we wanted a working group that it wasn't covered under the policy. So, therefore, that's why the title of the policy was changed from, spending of HAVA funds, to just Working Groups Policy. We also dropped the Joint

Partnership Task Force because that really related to state and Federal, and we agreed that we wanted it to also be able to include academics, technical experts, as well as non-governmental organizations. So as a result of that, we have come up with a draft Proposed Working Groups Policy.

And our next step would be to vet this internally. We've received some input from staff that is being taken under advisement. It would be an opportunity, Commissioners, for you to look at the draft and provide suggestions as well, with the goal that we would finalize a draft to be published for comment, and it would follow the order that we will have, hopefully, in our Notice and Public Comment Policy. I mean this would be the first document that would go through that process and it would go through whatever those steps are that are prescribed in the Notice and Public Comment Policy.

And the principles behind this, really, were to get information up front before we even get into the drafting so that we aren't restricting it to public comment under a Notice and Comment Policy but rather just some thinking; that because we are subject to the Paperwork Reduction Act that we would be able to assemble small groups of people to have informal discussions. This would not be a group vote. This is not a Federal advisory committee structure but just rather to get individual opinions. I would gather that many of the discussions would probably be, you know, conference call or otherwise, but to really broaden the circle of input that we have, particularly on issues like we're facing, the documentation by locals of unit government for MOE. Because at some point if, you know,

EAC may have to provide advice on what that should be and we could do a terrific job of that with input from states and non-governmental and others in Federal government who have been through similar activities on Maintenance of Effort.

So, there is really no formal action to be taken at this, although I would encourage Commissioners if you have any high level thoughts about this, in terms of principles, that should be included or not, that this would be an appropriate time to raise those, so as we go into the next step of the drafting we're sure to capture those principles and then you can see whether the language addresses your concerns or not.

CHAIR RODRIGUEZ:

Very good. Any questions or comments?

VICE-CHAIR DAVIDSON:

You know I just wondered if there's kind of a timeframe that we'd like the Commissioners to comment, if there is comments, so that we can move forward timely for you.

COMMISSIONER HILLMAN:

Well, we will be moving this quickly. Because we don't have another meeting until December, I will recommend that the draft -- the vote to publish the draft be done by tally vote. Otherwise we'd be waiting until December. If we do it by mid October, we could then be in a position to adopt this at the December meeting. So, that would be the timeline; that we use the December meeting as the date to adopt and back up our timeline to do things timely before then, which would mean publishing this no later than the middle of October.

CHAIR RODRIGUEZ:

I want to add that Commissioner Hillman, back with the previous agenda item did sort of a mock run, or a trial run, with her proposed policy, in how she worked through the Notice for Public Comment, giving the Commission a couple of opportunities to review it and posting it for comment, et cetera. So that was a mock exercise. And if we adopt that, this will be our first formal…

COMMISSIONER HILLMAN:

Right, right. And we did, in fact, along the way make some adjustments to the Notice and Public Comment Policy as a result of real time issues. Time is always the issue with respect to how quickly or not we can execute things.

CHAIR RODRIGUEZ:

Very good then. The next item is our workshop within a workshop within a public meeting, Best Practices To Ensure That Voting Systems Perform Accurately and Securely On Election Day. And I'll ask our Voting System Certification Director, Brian Hancock, and his guests this morning to come to the table.

MR. HANCOCK:

Thank you Madam Chair, Commissioners. Good morning. We're proud this morning to present to you a very important topic, and that is practices that states are using to ensure that voting systems perform accurately and securely on Election Day.

As our Executive Director said earlier this morning, we're within 47 days of a big election. And certainly, of the thousands of detailed activities election officials must perform on Election Day, or prior to Election Day, pre-election testing, which is also sometimes

called logic and accuracy testing, is certainly one of the most important. Pre-election testing is the last opportunity for election officials to exercise the voting system as it will be implemented in their jurisdiction when the polls open on the morning of Election Day. Good pre-election testing, boiled down to its most basic concept, is the act of casting a known pattern of test votes on each ballot style to be used in the election on all voting equipment used in the election.

Recognizing the importance of pre-election testing and also its partners, ballot preparation and printing and parallel testing, the Election Assistance Commission has worked with state and local election officials to produce two documents. The first was our Quick Start Management Guide on Ballot Preparation, Printing and Pre-election Testing, which was actually published back in September of 2006. And a few months ago the EAC posted on its Website the accompanying chapter of the Election Management Guidelines entitled "Pre-Election and Parallel Testing." This document is, as I said, up on our Webpage. This, as well as all of the other chapters of the Guidelines finished in this past year, are currently being formatted for printing by the U.S. Government Printing Office. Once these documents have been printed, they will automatically be distributed to the EAC's mailing list of some 6,000 state and local election officials across the country.

Today we've been joined by two individuals who have vast experience with testing voting systems and pre-election testing in particular. Susan McRill is the Administrative Manager for the Bureau of Elections in the Michigan Department of State. Ms.

McRill's responsibilities include the evaluation and approval of electronic voting systems, ballot containers, and election-related forms. Ms. McRill will speak to us today about how Michigan conducts its pre-election testing for their optical scan voting machines.

Merle King is well known to almost everyone in the election community. Merle is an Associate Professor of Information Systems and the Executive Director for the Center of Election Systems at Kennesaw State University in Georgia. Together with his colleagues at the Center, Merle has led the development of one of the nation's best resources for election administration support. The Center for Election Systems provides voting systems technical support to the 159 county election supervisors in the State of Georgia, and today Merle will be discussing with us pre-election testing for DRE voting systems.

And with that, I believe, Susan.

CHAIR RODRIGUEZ:

Welcome.

MS. MCRILL:

Thank you. Good morning.

CHAIR RODRIGUEZ:

Good morning.

MS. MCRILL:

Thank you, Madam Chair, and the distinguished members of the EAC. On behalf of Michigan Secretary of State Terri Lynn Land, and Christopher Thomas, our State Director of Elections, I'd like to thank you for inviting me to give testimony this morning regarding

the pre-election logic and accuracy testing of optical scan voting systems and also ballot production standards.

Before I begin I'd like to provide just a little bit of background regarding the administration of elections in the State of Michigan. Michigan elections are very decentralized. The process is very decentralized which means that our city and township clerks are actually responsible for administering all of our local, state and Federal elections. We have 272 cities, 1,242 townships. We also have 97 villages that have separate responsibility for the administration of odd year village elections, and then of course our 83 county clerks. At this point we have approximately 5,000 voting precincts and approximately 7 million registered voters. In 2004 and 2005 Michigan implemented a state wide optical scan uniform voting system. Under this system all the city and township clerks within our 83 counties were given the opportunity to select a single brand of optical scan voting system for use within their jurisdictions. We currently employ three different brands of optical scan systems. These are owned precinct based. We employ the Diebold or Premier AccuVote, ES&S M100 and M650 and the Sequoia Optech system. In 2005 and 2006 -- early 2006, we implemented the AutoMARK Voter Assist Terminal as our disability compliant system. So that system is also used on a uniform basis throughout the entire state. We also observe a consolidated election calendar which means, for the most part, we administer four elections each calendar year. There are a couple of exceptions to that, however.

Michigan's pre-election logic and accuracy testing procedures and requirements come from what we refer to as the

promulgated rules for electronic voting systems. The promulgated rules were initially enacted in 1978 for punch card. Obviously the only electronic voting system in place at that point was the punch card voting system, which was used quite widely throughout the State of Michigan until more recent years.

The promulgated rules require that two separate tests be performed by our local election officials prior to every election. The first test is referred to as the preliminary test. This involves the testing of all tabulators, programs and ballot styles that will be used at the election. And we encourage our election officials to perform the preliminary testing as early as possible prior to Election Day. The second type of testing that's required by law and rule is the public test. The public test has to be conducted by law no later than the fifth day prior to the election, and this involves the testing of randomly selected tabulators, programs and ballot styles.

The promulgated rules for the testing of electronic voting systems are very, very specific and very comprehensive. The rules include tests that are specific to the various election types or ballot types, including open primaries, partisan general elections, non-partisan elections with and without proposals. Included in the rules and our test guidelines are samples of actual ballots, samples of charts of pre-determined results and test decks, and again specific step-by-step instructions that are designed to assist local election officials in performing their duties with regard to these areas.

Michigan traditionally conducts open primaries. And in an open primary system obviously voters are not required to declare party preference at the time of registration or prior to being issued a

ballot, but this type of primary system does require that certain ballots be included in the test deck to ensure that the programs are prepared to accurately award votes, you know, in that type of an election environment. So, in an open primary system, for example, if a voter splits their ticket, meaning that they award votes to candidates of multiple political parties, that means that none of the votes in the partisan section of the ballot will count. However, this has no negative impact on votes cast in the non-partisan section or proposal sections because under the provisions of promulgated rule and law the three sections of the ballot stand alone. So this is just an example of differences in terms of the programming and testing that's required for the various election types.

Under the Michigan test procedures, in addition to this, each candidate seeking nomination or election to the same office must receive a different total number of votes. A no-vote position can be awarded less than one vote as a minimum. And we also require that, again, as part of each candidate receiving a different number of votes, that that be verified and clearly defined. In other words, if you have more than one candidate seeking nomination or election to the same office that's receiving the same number of votes, how would you know for certain that candidate "B" was not in fact being awarded votes intended for candidate "A," you know, and so forth. So that's a very important part of our testing process.

Over time our testing procedures have been adapted to accommodate precinct-based optical scan voting systems as well as direct reporting electronic voting systems that were employed in Michigan prior to the state wide conversion to a single system.

As part of the conversion process Michigan's 83 counties, as well as our largest cities and townships, were given EMS technology. This now gives them the ability to perform their own ballot definition and tabulator programming, which prior to that time was specifically performed by our voting system and print vendors. In 2005-2006 with the rollout of the AutoMARK Voter Assist Terminal our county clerks and local election officials were also given the AIM software, which makes it possible now for them to do their own AutoMARK programming.

Going back to the early days of punch card and the performance of pre-election logic and accuracy testing, this responsibility has always rested, as I said, with our local officials, more specifically the local election Commissions. Regardless of that, in most cases this work is actually being performed by our city and township clerks and members of their staff.

The purpose of pre-election logic and accuracy testing is to verify that, one, the ballots, programs and tabulators assigned to each precinct will work in concert with one another on Election Day; and, two, that the programs are properly prepared in accordance with law and rule; and, three, that the voting equipment is functioning properly. Pre-election logic and accuracy testing is viewed as basically a three-step process. Step one begins with the preparation of the chart of pre-determined results. We recommend to our local election officials that they begin the preparation of the charts as early as possible prior to Election Day. So basically as soon as all offices, the number of positions to be filled, the number of candidates that will appear under a given office and the number

of proposals that is known we recommend that they build the chart. It's the building of the chart that really is the most time consuming part of this work.

I brought along with me, just as a visual, an example of the typical November general election chart of pre-determined results. Now this test deck, the test deck involved here, we're looking at about a 70-ballot test deck. So as you can see, there's a lot of work, a lot of detailed work that goes into the preparation of this type of document.

As is true with most election-related tasks, we recommend that this work be performed by no less than two election officials. Sort of the rule in elections is, whatever I do is not done until someone other than me verifies my work. And so, that's certainly true when we're talking about the preparations of charts and test decks.

The Michigan ballot is a very long ballot, so the ballot that -- the chart that I just showed you is based on, again, November general election ballot 2006. This is a 20-inch ballot. The length and width of the ballots, of course, do vary, depending on the type of election that we're preparing for.

Once the chart is created, then it's at that point that we recommend that our clerks start making decisions, actual decisions regarding how each of the ballots that will be included in the test deck will actually be marked. So working through the instructions that we provide, they go through and actually note on the chart, starting with test ballot one, how each of those ballots will actually be marked; the vote positions that will be marked on these ballots.

We use a one on our charts to identify a mark or a vote that should count if the program is accurately prepared. We use a zero to identify votes or marks on ballots that should not count if the program is accurately prepared. And if the chart is being prepared for a general election, there's a third code used. It's usually going to be a one with a zero around it or a one in parens, and that's used to identify votes that should automatically be awarded to candidates of a single political party by virtue of the straight party vote. As soon as the actual ballots are received, then it's time for the test deck to be created. Again, we recommend that at least two people be involved in the process, one reading from the chart that was previously prepared and verified while another election official actually marks each of the test ballots. And then, again, we verify that work to make certain that it is accurate.

I want to note that all marks made on the test decks are made in accordance with the instructions that appear on the actual ballots issued to voters, meaning all marks are recorded using black or blue ink which is recommended in Michigan, and all marks are made within the target area.

We do not use logic and accuracy testing as an opportunity for clerks to experiment with various types of marking tools into regular marks or stray marks that might actually be seen on official ballots Election Day, while we think that type of testing or information certainly is important to election officials. As an election official, if I'm using a particular system I need to be familiar with the parameters that go along with, you know, the use of that system in terms of marking tools and types of marks. But we would consider

that type of evaluation or a testing to be performed -- something that should be performed outside of the normal logic and accuracy testing. Again the purpose of logic and accuracy testing is to verify that if the ballots are properly marked and if the programs are properly prepared and if the equipment is performing properly, that all of these things will work in concert with one another as designed on Election Day.

For audit purposes all test ballots are assigned a unique ballot number and that number, of course, corresponds to the numbering that appear on the chart of pre-determined results.

So to the extent possible, as part of the testing process we're trying to simulate actual Election Day conditions. So again for this reason we're using proper marking tools in following the voting instructions. We also, and this is critical, all test decks should be created using ballots taken from the same print run as the ballots that will be assigned for use at the polls on Election Day. I cannot stress the importance of that enough. In addition, we recommend that a certain number of ballots be included in the test deck that are folded to simulate the tabulation of absent voter ballots. Step three, as soon as the programs are received, then it's time for clerks to conduct their preliminary testing. As ballots are rejected by the tabulator or returned by the tabulator, the specific reason for the rejection or return needs to be verified against the chart of pre-determined results to ensure that the reason for the rejection matches the test that that particular ballot was intended to perform. We also, in some cases recommend that they place codes on the test ballots that also identifies the specific test that

that test ballot was intended to carry out. We include in our test deck a certain number of blank ballots, ballots taken from the wrong precinct just to verify that the tabulator will not accept those. Obviously it should not be possible for those ballots to be overridden or to be forced into the tabulator. We require that a ballot be included on which all assigned vote positions are marked. We also include a ballot that is designed to verify that the unused vote positions are not going to be recognized by the programs. And then, of course, a variety of different variations of straight party, mixed tickets, split ticket voting just to verify the accuracy of the programming there.

I'd like to say that the Quick Start Management Guide on Ballot Preparation in Pre-election Testing is an excellent, excellent document. A lot of good information here. So for states that do not have specific written detailed procedures on the performance of logic and accuracy testing I think this is a good start.

And testing is not complete until an errorless count is obtained for each ballot style that will be used. And once this is accomplished then all of the programs are sealed into the tabulators and the charts, test deck, zero tapes, test results are sealed into an approved ballot container where they're retained for 30 days following canvas and certification of the election, plus 22 months for Federal elections.

Michigan strongly discourages the use of vendor-provided test decks. History has proven over and over again that most of the test decks provided by vendors are inadequate. There is no such thing as the magic ten ballot test deck. I mean I wish that were

true. It's just not true. We haven't seen that. So it is mandatory for the election officials in Michigan, and vendors, who want to take on this responsibility, to adhere to Michigan law and promulgated rule when it comes to pre-election logic and accuracy testing. There are just no shortcuts and no exceptions. The typical test deck prepared for an August primary will contain anywhere from 30 to 50 ballots and a typical test deck for a general election will contain anywhere from 50 to 70 ballots.

In closing I'd like to make a few comments regarding ballot production standards, and more specifically the Michigan ballot production standards. As we all know, optical scan technology relies on a physical ballot. For this reason it is imperative that those responsible for the design and production of ballots pay close attention to all applicable legal and technical standards that are specific to the type of voting system in use. In the early days of optical scan, and I'm talking going back to the early 80s, mid 80s, we as a community, vendors and election officials, learned that the failure to adhere to certain technical standards would result in the inability of tabulators to accurately and consistently count votes. Most of the problems identified at that time had to do with paper weight inconsistencies, improper ballot trim, variations in ink density, improper positioning of score lines, ballot stub perforation issues, and in some cases improper or inconsistent calibration of tabulator read heads. With the passage of time, however, these issues seemed to fade away which gave us the impression that our printers apparently were doing a much better job at adhering to the technical standards that apply to these systems. Unfortunately, in

2005-2006 when we rolled out the AutoMARK Voter Assist Terminal we started hearing reports of equipment failures. And of course whenever this happens you have the printer saying it's the equipment and you have the equipment manufacturer saying, "No, it's the ballot. There are problems with the printing of the ballot." But after a considerable review and meetings with vendors and print vendors as well as voting system vendors, we had determined that the majority of these reported cases were the result of improperly prepared ballots; ballots that continue to fall short of the standards that are recommended by the manufacturers of the optical scan systems.

It's important to note here that while there are no ballot standards that are specific to the AutoMARK, nonetheless the AutoMARK equipment was designed based on the assumption that the ballots that would be used with this system would be prepared in accordance with the tabulator, you know, technical standards. So what have we learned from this? Well it taught us that while some improvements more than likely have been made to the production of ballots over the years as a result of a number of optical scan voting system upgrades that have also taken place pretty much at the same time, we believe that what actually happened was that the tabulators had become more forgiving or the standards required by the tabulators have over the years become less rigid. Not to the extent that accuracy or integrity have been compromised but just enough to allow for a little bit of, excuse my terminology here, slop with regard to the production of ballots. A little less rigid in terms of those requirements.

As we meet here today, Michigan Elections Bureau staff, as well as vendors, are in the field installing an upgrade to the AutoMARK Voter Assist Terminal. We are moving to version 1.3. There are a number of enhancements included in this new version, including enhancements that will make this equipment a little more forgiving, again, in terms of the ballots that it will be able to accept, and specifically ballots that might shall short of the more rigid optical scan technical requirements. Obviously we have more work to do with our print vendors as well as our manufactures of the system, but we are confident that as a result of the comprehensive logic and accuracy testing that we continue to perform any issues related to ballot preparation or equipment or programming issues will be identified and remedied.

Also this week we are forwarding a copy of the Michigan Ballot Production Standards to all Secretaries of States. I just wanted to make note of that. The Michigan Ballot Production Standards was just released, I believe last month, and this document represents a lot of hard work on the part of our vendors as well as county and local election officials, a lot of compromise, a lot of consensus building. Not only do the standards go into great detail regarding voting instructions, font size, ink specifications, office headings, party vignette instructions, write-in votes and so forth, but they also include a summary of the technical requirements that are specific to each of the three optical scan systems in Michigan. So we believe it's a very comprehensive document and we hope that for states that do not have something

like this, this will maybe help them kind of move forward in that direction.

At this point if there are any questions I'd be happy to entertain those.

CHAIR RODRIGUEZ:

Thank you very much for your presentation. I think we will allow a little bit of time for discussion now. Do you have anything Commissioner Davidson?

VICE-CHAIR DAVIDSON:

Thank you. Thank you for coming. Thank both of you. I want to really express I am a firm believer that testing is the secret of a successful election and the more testing that is done the better off we are. It was really some of the office staff and myself that come to the decision that we felt that this would be a great presentation right before the election. And with you sharing your document out with all the Secretaries of State and election officials this will be a help, because even when they have a direct record type equipment they do have absentees. So this will be helpful in every state. And I appreciate your willingness to share your information because so much of the time people try to recreate and sometimes they're creating on the fly at the last minute and they forget a lot of issues that should be addressed and so your document should be very helpful to states that have not addressed these issues in the past and are ready for it. I think that many a times we have found that the thickness of the ballot, you know, as simple as the paper, as you said, the weight of the paper can cause problems and different issues that come up and then that makes for a longer night to get

results out obviously. And so, the testing beforehand I just can't say how much I really always felt that that needs to be done and procedures set in place where all of your individuals units of government is working the same is very beneficial and they're not doing it themselves.

And the other thing that I really, really am appreciative of is you're not accepting the vendors' test decks because we all know that that is not a satisfactory test as we move through elections. And we try to get that word out to our election officials time and time again, "Take this responsibility upon yourself and make sure it's transparent to the public."

And that was the one question I wanted to ask you. Do you invite in the public when you start your L&A testing, the logic and accuracy testing? At the testing do you invite the public in to watch that or take part in that testing procedure?

MS. MCRILL:

Yes, we do. As I mentioned, there are two separate tests that are required under the provisions of promulgated rule. The first is the preliminary test and then the second is the public test.

VICE-CHAIR DAVIDSON:

Okay.

MS. MCRILL:

It must be conducted no later than the fifth day prior to the election. Obviously it falls under the Open Meeting Act, so the date and time and location of the test is published as well as posted. Unfortunately, though, we very, very seldom see any members of the public showing up at the test. It's kind of a joke, you know. I

mean it's sad but true. We tell clerks, you know, "Don't stay up the night before making cookies because more than likely no one is going to show up." But nonetheless they're going to go through and they're going to perform that test. I think that's starting to change a little bit, but we have a long way to go in that area.

VICE-CHAIR DAVIDSON:

And I didn't pick that up. I knew you did the two types of testing, but I didn't pick that up. That's excellent.

You know, one thing that I think that you didn't mention, and you might have, is, you know the timeframes are so close, as we all know, once you have all the names for your ballot and you've set up the format. But once you have all the names and start filling that in, your time is pretty short. What is your certification date back to the units of counties so that they know all the candidates and issues that's going to be on the ballot? Is that 50 days before or 55?

MS. MCRILL:

I think it's generally about 60 days prior to the election.

VICE-CHAIR DAVIDSON:

That's great. A lot of our states don't have that much time and so Michigan's law is very...

MS. MCRILL:

We don't always meet that deadline, but that's...

VICE-CHAIR DAVIDSON:

Court cases?

MS. MCRILL:

Exactly.

VICE-CHAIR DAVIDSON:

Court cases sometimes. And are you ever put in a position that after your ballots are out and even people has been voting absentee the court will rule a candidate off of the ballot?

MS. MCRILL:

That has happened in the past.

VICE-CHAIR DAVIDSON:

And then are you ordered not to count that position?

MS. MCRILL:

Well depending on how close we are to the election there are a couple of different remedies. Number one, if time allows we actually have the absentee ballots reissued advising clerks that if ballots are not returned, if the replacement ballots are not returned by the close of polls on Election Day, we nonetheless count the original ballot with the exclusion of the votes cast, you know, for that one office. So it really depends on just how close we are to the election.

VICE-CHAIR DAVIDSON:

Very good. Thank you for coming again and I appreciate you answering the questions.

MS. MCRILL:

Thank you.

CHAIR RODRIGUEZ:

Commissioner Hillman?

COMMISSIONER HILLMAN:

Thank you, Ms. McRill. I want to go to the point you made about the public part of the logic and accuracy testing and how members

of the public tend not to participate. And I guess what I want to get to is how we begin to educate the public as to what that demonstration is in the scheme of things of preparing for Election Day because I can imagine if as people are listening to your presentation on the Web cast and some of them may be saying, “I don’t understand what she just said. What does that have to do with me, the voter”? So when you speak to public groups, how do you digest what you just shared with us in ways that somebody says, “Oh, I get it. I understand why this is done and what it provides me, the service it’s providing me, the voter”?

MS. MCRILL:

I think public accuracy of the testing is very important if it provides the members of the public, candidates, representatives of political parties an opportunity to come in and see for themselves that the voting systems and the programs that we use to count votes on Election Day have been accurately prepared. The promulgated rule also makes it possible for individuals who choose to attend this testing to actually mark and have ballots tabulated just to further assure themselves that the programs are accurately counting votes. So, you know, I think it’s an excellent opportunity for anyone who has concerns or questions regarding the types of voting equipment that we use and, again, the accuracy of those systems to come in and see for themselves and actually have hands-on opportunity, you know, with that equipment prior to Election Day.

COMMISSIONER HILLMAN:

So it may be the hands-on that would be the more attractive, because if I were sitting observing something I probably...

MS. MCRILL:

Right, right.

COMMISSIONER HILLMAN:

...would, “What do I know about what’s going on?

MS. MCRILL:

Right.

COMMISSIONER HILLMAN:

“I know what you tell me.” But if I were actually participating and knew there was an opportunity to participate it might be more enticing, and that certainly is a good practice.

It’s my understanding that this year Michigan needed to do an upgrade or some change to its voting system. Am I understanding that there was a need for some -- a greater improvement or...

MS. MCRILL:

No. As I mentioned, we’re at this point installing a voluntary upgrade of the AutoMARK Voter Assist Terminal. We’re upgrading to software version 1.3, but that was strictly voluntary. We knew that -- given the strict requirements of that system, in terms of optical scan ballots and the technical standards that apply to the production of optical scan ballots, we knew that we were again going to hear reports of equipment failures resulting from the ballots without this upgrade.

COMMISSIONER HILLMAN:

Okay. So it was something that Michigan determined to do for improvement of its process.

MS. MCRILL:

That's right.

COMMISSIONER HILLMAN:

It wasn't a required.

MS. MCRILL:

Exactly.

COMMISSIONER HILLMAN:

Okay. So when you do that kind of an upgrade, whether it's required or voluntary, is the testing, the logic and accuracy testing that you do different than if nothing had been done to the system since the last election?

MS. MCRILL:

It's basically the same test process.

COMMISSIONER HILLMAN:

And so, what advice or guidance do you give officials to use to know what they're looking for in the change, if you understand? When you've made an upgrade, the system is going to perform differently than it did before the upgrade. So how do they know what they're looking for?

MS. MCRILL:

Okay. Some of the problems that we saw in the past with the AutoMARK Voter Assist Terminal were that we received reports that in some cases when clerks during the testing process or voters on Election Day inserted the ballot into the equipment and went through, you know, the voting process or the marking process, that in some cases only one side of the ballot would print or the ballots would jamb and, you know, the equipment had to be basically taken apart in order to remove the ballot. So I would hope, as a result of

the current upgrade that those issues will virtually disappear. Again, we have determined that those types of problems, those specific problems were the result of improperly prepared ballots or ballots that did not exactly meet the tight technical standards that apply to the production of optical scan ballots.

Specific areas -- or the specific issue there had to do with the perf. What we discovered was that the optical scan ballots being prepared in many cases had a very rough perforation at the top of the ballot, and this was making it impossible for the AutoMARK to recognize the beginning of the ballot or the top of the ballot because of this jagged edge, okay? So with this current upgrade it will be a lot easier for the AutoMARK to identify the beginning of the ballot and again be less critical, in terms of jagged edge or, you know, the smoothness, you know, of the perf on the ballot.

COMMISSIONER HILLMAN:

Bear with me if you informed us of this, but do you test every system that would be used in an election?

MS. MCRILL:

Yes.

COMMISSIONER HILLMAN:

Okay.

MS. MCRILL:

Every unit, every optical scan tabulator as well as every AutoMARK device, is tested.

COMMISSIONER HILLMAN:

Every piece of equipment?

MS. MCRILL:

Every piece of equipment is tested.

COMMISSIONER HILLMAN:

Do you ever test equipment to failure? Do you ever take a machine and just test it and test it and test it over time to see what would have to happen for that system or for that piece of equipment to not function properly?

MS. MCRILL:

No. No.

COMMISSIONER HILLMAN:

Okay. And my last question for now is, you've developed your expertise over the years. I mean I did have a chance to see your bio and you've done a number of different things with Michigan. And so, for states or jurisdictions that are looking to see how it can ready personnel/staff to perform the work that you do, what kinds of things have you done throughout your career that enable you to have the expertise you have today?

MS. MCRILL:

A lot of hands-on. Hands-on experience. Actually, get out there and prepare a chart, prepare test decks, perform the tests and work very closely with the elections community, as well as the vendor community. A lot of consensus building, information sharing and again, just a lot of hard work.

COMMISSIONER HILLMAN:

So if somebody said, "Well then, how do I prepare a test deck," I mean, where does somebody go to learn how to...

MS. MCRILL:

Michigan has an excellent document that walks you through the pre-election logic and testing process step-by-step. Included in our manual are sample charts and ballots in step-by-step instructions, again, for the different election types. So I think the manual is very comprehensive. Our manuals are living documents, so we're always looking for ways to improve them. But I think we have a real good document in place that we'd be happy to share with anyone who has an interest in meeting with us or taking a look at what we've put together.

COMMISSIONER HILLMAN:

Okay, thank you.

MS. MCRILL:

Thank you.

CHAIR RODRIGUEZ:

Thank you. And I believe we have, is this what you're referring to, the "Test Procedures for Optical Scan Voting System"?

MS. MCRILL:

Yes. Yes.

CHAIR RODRIGUEZ:

Because you're presenting here today, we'll post this on our Website. So anybody who is watching this Webcast at some point in the future and wants to review the manual will have access to it.

MS. MCRILL:

Thank you.

CHAIR RODRIGUEZ:

We've really covered a lot of bases with the questions from the two Commissioners. We have to take a break for the camera people,

and so I'm going to propose that we do it right now because we have to break within two hours of starting the meeting, and then Brian, if that's okay come back for Dr. King's presentation...

MR. HANCOCK:

Absolutely.

CHAIR RODRIGUEZ:

...in let's say 15 minutes and 16 minutes with a little grace. Thank you.

[The Commission recessed at 10:44 a.m. and reconvened at 11:00 a.m.]

CHAIR RODRIGUEZ:

All right. Brian we're ready for our next panelist, Dr. King.

MR. HANCOCK:

Thank you, Madam Chair. Dr. King.

DR. KING:

Thank you, Madam Chair, Commissioners, staff of the EAC. My name is Merle King. I'm the Executive Director of the Center for Election Systems at Kennesaw State University in Georgia. We're often referred to as the technical arm of the Secretary of State's Office, in terms of voting systems. And it's my pleasure to be here today to talk about pre-election testing and L&A testing in particular.

As I listened to the introductory remarks of Susan, the first thing I wanted to say is, I've attended two state conferences of election officials this year and in each conference the Quick Start Guides were praised from the podium. And I want to pass that on to the EAC that I think those documents are being extremely well received among election officials and they're being promoted for use at the state level.

CHAIR RODRIGUEZ:

Great.

DR. KING:

L&A testing is one of the kind of time-honored traditions in election testing, and it has served a function historically that still exists and is still a very important function. But a lot of things have changed around the perimeter of L&A testing, and the remarks that I'll make today talk about pre-election testing that includes L&A.

So the first thing that I think I'd like to do is to kind of talk about what L&A does and then what L&A doesn't do and what the concerns may be of a jurisdiction regarding that. And I think historically L&A served a very, very important function of permitting parties, candidates and the public to verify the correctness of the ballot prior to the election. And that function still exists and that is a very important function regarding confidence in the process and confidence in the system. The challenge is what do you do if it's not right? And I think that has been a part of the genesis in the State of Georgia of developing interlocking pre-election testing methods to address those things that certainly would be discovered in L&A, but in many jurisdictions, including Georgia, L&A is required to terminate at the close of business five days prior to the election, which really isn't enough time to address serious anomalies that are found in the system. It's certainly enough time to implement contingency plans, but many times not much beyond that.

So what I'd like to do is kind of talk about a larger view of pre-election testing, what we do in the State of Georgia, and then

perhaps what may be transferable to other jurisdictions, if appropriate.

And let me, if I can, give an example for why we think additional testing is needed, besides L&A. Georgia uses a uniform voting system that consists of DRE units for in-precinct voting, mail-in absentee and also electronic poll books. So we have a single vendor. Premier is the vendor in the state. But there are many things that are tested for now in L&A, such as battery status in the DREs, calibration of the DREs. And so those are very important tests that occur, but the observation would be if you are testing for battery capacity during L&A and the batteries fail do you have enough time to get the batteries in in time for the election? So that's why some of our work has shifted forward on the time schedule.

As a part of any testing methodology you have to have testing goals; that is, what is it that you want to accomplish in the testing? And of course with L&A, public information, public confidence, confirmation of the correctness of the ballot, those are important testing goals. But, as again, the complexity of the voting environment has changed, we also test for a lot of other things now. We test for compliance with recent product announcements. If a vendor is publishing announcements about problems with a system, are those being folded into some testing protocol, whether L&A or another testing protocol? There have to be metrics of measurement. And usually in L&A we look for pass/fail metrics, but you may also be looking for qualitative metrics. Is the battery within 80 percent of its life? Is the calibration within 90 percent of

accuracy? So in addition to hard thresholds of testing, there's also qualitative. And then finally there needs to be a method of integrating the feedback from your testing into process improvements. So during L&A, if you have failure of ballot, what do you do with that data? Do you just fix the ballot or do you fold it back into fixing the process that produces a defective ballot?

So kind of shortening my testimony from what I've presented, I'd like to just talk about a couple of kinds of testing that we integrate into the pre-election mix in Georgia and then talk about how that impacts and, we think, improves L&A in the state.

The first type of testing is ballot testing. And the Center for Election Systems builds 126 of the 159 county ballots in Georgia, but we test all of the ballots at our Center. And in the process of building ballots we've developed a metric of 85 quantitative measurements of the correctness of the ballot; that a ballot must pass all 85 metrics. In the testing of those ballots we employ the use of audio as a method of enabling our testers to both visually verify that the ballot contains all of the correct races, the candidates, candidate's name spelled properly, et cetera, but it also is compliant with Georgia code which specifies font size, colors, ordering of candidates, description of incumbents, et cetera. But we use the audio portion to not only verify that the audio portion will work on Election Day, but as a way of providing additional feedback to our ballot testers so that they're not only reading the ballots but they're listening and reading and watching.

The process of investing in ballot testing, and this is typically now, depending on when we get the qualification of candidates,

could be as much as 60 days prior to the election, is, it minimizes the anomalies that are discovered during L&A. And we go through several iterations with our jurisdictions of proofing the ballots so that we will first ask them to proof the structure of the ballot, which is all of the races that will be on the ballot on Election Day are correct. And then as qualification comes to a close we will populate those races with candidates. So ballot building and ballot testing becomes an important part of pre-election testing in the State of Georgia to ensure that on L&A testing that that is not the first time that counties are really looking at their ballots in detail.

The second kind of testing that we do has to do with the preparation of our electronic poll books. And in Georgia we use about 6,500 electronic poll books distributed in each precinct in the state. And as a part of the testing of the files that are used to populate the poll books we take the state voter register system, which now has I think 5.4 million voters in it, and we regress the VR system's data against the known combos, ballot styles that will be used in the coming election to identify any voters that have not been assigned to a valid combo. And in the Presidential Preference Primary we had, I think, a turnout of about 1.1 million voters, but in the preparation for that election, by going through this process of testing our electronic poll books file against the state VR system, we identified that there were 28 voters that were not assigned to a valid ballot style. And for those of us who work in election that's a phenomenal reduction in what we suspect may have been the case prior to that. So, again, even though L&A requires the testing of our electronic poll books, prior to L&A we're

doing a great amount of rigorous testing trying to reduce the number of anomalies in our VR system, so that when a voter shows up in a precinct they can be assigned the proper ballot style. We have about 3,500 ballot styles in the State of Georgia.

Finally, when we get to logic and accuracy, which can begin as much as 30, 40 days out from the election, depending upon the size of the jurisdiction, in general, I think there is some very good practices. Certainly Susan talked about those today. But I'd like to talk about a concern that I have regarding L&A, and it is also related to Susan's testimony, and that is the involvement of the vendors in L&A testing. In many jurisdictions, because of the bundling of services, vendors will sell a bundle of services to a jurisdiction that may include warranties on the equipment, ballot building. It may also include L&A testing. And I think I would like to emphasize that the accountability and the responsibility for L&A testing must fall on the jurisdiction, and I would encourage every jurisdiction to take an active role in that testing.

And I think from one perspective, the obvious reason, is a conflict of interest. In situations where ballot anomalies can be identified, there are certainly techniques in which duplicate databases can be created. And vendors are very well prepared and skilled in accommodating multiple databases for tabulation on election night. It's something they deal with frequently. It's very confusing, though, at the jurisdiction level, to deal with multiple databases on election night because of the way in which the data has to be aggregated.

But I think a more subtle problem with using vendors for L&A testing has to do with the timing. And often a vendor may have multiple clients in a state, and so there's a tendency for the L&A in those jurisdictions to get pushed closer and closer to the Election Day, giving less and less time to deal with anomalies that come up.

The requirements in Georgia is that all equipment is L&A'd. And during that process, in addition to the ballot correctness, which again, is very observable and we encourage the public to come, certainly L&A announcements are posted in the Public Organ for that jurisdiction, but it is also a chance for the jurisdictions to look at what we know to be a recurring issue with DRE units and that is calibration of the units. And one of the problems that I think many DRE jurisdictions run in to during L&A, is that the units are not calibrated in the Election Day voting position. And by that I mean, normally the tablet, the touchscreen tablet is raised to about a 45 degree angle when it's used in an election. It is time consuming for jurisdictions to do that. They have to open up the case. They have to extend the support arm, raise the unit to its proper position to calibrate. The problem if the unit is calibrated in its prone position is that the angle that the calibration is done is not the angle at which the unit will be voted. And in this past primary we had a complaint from a voter in a county in South Georgia, and as we were talking to the county election official about the voter's complaint on the vote switching, the candidate presses one candidate and it marks another, we went through our normal protocol of asking questions and then she said, "This voter is 6'10"." And it became pretty obvious that the unit was calibrated in the

prone position and now we have a voter at the extreme end of the height coming down from one of the highest possible angles. So one of the things that we do stress in L&A is the proper and complete calibration of the units to be used in the election.

The second is that DRE units often are used for multiple purposes during an election. And one is the obvious, that they're used to collect votes at the precinct. But there's a growing practice of jurisdictions who use DRE units for walk-in, absentee, or advanced voting, or no-excuse absentee, whatever it's called. Because those units are there in the county election office they are also then identified for use to upload the tabulated votes into the server or the election management system. So in that case, those units need to be tested during L&A for both functions, both their ability to properly display a ballot, collect votes, tabulate the votes, but then also to function as an upload unit on election night.

There is an issue that has appeared, at least with some DREs, that units that are used for this purpose routinely -- and that is a practice in jurisdictions, they'll identify a unit for a certain function and they'll use it for that function in each election -- these units accumulate archived elections into their memory and their ability to rapidly upload files deteriorates. So that is also something that we're asking our jurisdictions to do is to assess whether units are going to be used for a single function on election night or for multiple functions and make sure the L&A testing addresses both.

That's also true of the electronic poll books units; that some jurisdictions are using the electronic poll books units to both verify the correct ballot style for the voter and program and issue the

voter access card for that voter. But some are also discovering that if you disable the voter card creation feature that unit could be taken for what we call “in-line verification,” that is, to move out through the cue and to make sure that voters are at the right precinct without them waiting in line for, you know, 30, 40 minutes to discover they’re at the wrong precinct. So in that case we have electronic poll books that are being used for two purposes on Election Day, and they must be L&A’d separately for that function.

So, I guess Commissioner Hillman, one of the questions that you had about, should we be folding back our experiences into our L&A protocol, I think that’s a very appropriate question. And I think the challenge would be for a jurisdiction is, if logic and accuracy is your only testing stage or your best testing stage. You have to fold all of those things back into L&A rather than spreading them out over perhaps a range of protocols.

In Georgia we also do Election Day parallel monitoring, that’s not really pre-election, but we have a process by which we do try to simulate what occurs in a collection of precincts that are selected at random. And that grew out of one of the limitations of L&A is, you are not testing on Election Day. And so, some critiques have posited that testing for correctness in an election should include testing on Election Day.

And then finally, I think, one of the most important parts of testing in general and L&A as a part of that testing, is to make sure it’s part of a larger integrated plan. And that is making sure that, first, all of your recent revisions and statute, code, rules, regs, best practices, product advisories from the vendor, known anomalies

that are identified in the system, those have to be spread out over your testing protocols. And some of those clearly need to be in L&A, but some of them may need to be pushed back into acceptance testing state certification. But in any event they should all be accounted for. And I think that's an important point, that L&A and the other testing methods that I've discussed cannot allow to stagnate. They have to be dynamic to the extent that they are taking into account the changes in the environment that surround election.

So at our Center, what we try to do is to debrief on the results of our testing, and sometimes that testing information is rolled back into modifications of the L&A procedure. Sometimes it's rolled back into modifications of our acceptance testing, et cetera. And I will say in Georgia that at our Center we offer a workshop for county election officials on L&A testing. And it's L&A testing over all of our gear; the election management server touchscreens, DREs, how to complete the paperwork. And that's an ongoing course that we try to offer at obvious sensible times, that is, preceding elections. So we'll be doing an L&A workshop next week, in helping our election officials get ready. So that's an ongoing training procedure and prior to each of those workshops we kind of go back through, have we identified anything else that we need to be helping individuals identify prior to L&A?

And with that I will thank the Commission for the invitation to come here. And I'd be glad to answer any questions that you have.

CHAIR RODRIGUEZ:

Thank you Dr. King. I have one question and then I'll go first to Commissioner Hillman and see if she has any.

This regression test that you did with the poll books, you identified 28 ballots where there wasn't a match between the voter and the ballot style?

DR. KING:

28 voters. Yes, ma'am.

CHAIR RODRIGUEZ:

28 voters. Was that a very simple ballot? Is there a possibility that with a lengthier ballot or more complicated ballot there may have been more voters that didn't match?

DR. KING:

No, because the matching is to the combo that is identified for that voter's address.

CHAIR RODRIGUEZ:

Okay. So that would be a hard and fast test...

DR. KING:

Yes, ma'am.

CHAIR RODRIGUEZ:

...as opposed to...

DR. KING:

And those voters were identified to the country registrars. Certainly they understand the importance of trying to find those voters, trying to clean up that data and make sure that those folks are properly assigned to a ballot style to vote. The obvious workaround is they would be permitted to vote provisional had they walked in.

CHAIR RODRIGUEZ:

Right. It's astounding to me that there were that few out of your millions of possible...

DR. KING:

It didn't start out that few...

CHAIR RODRIGUEZ:

Okay.

DR. KING:

...because we try to get on that as soon as we have confirmed all the ballot styles, and that's an ongoing process. But I have to say we're very proud of our ability to do that. And it's somewhat serendipitous. It's something that occurred to us after we implemented the poll books because we started to collect this data and we're hoping for -- obviously our goal would be to get that down to zero, but we're pleased where we are but want to keep working on that.

CHAIR RODRIGUEZ:

Sure, sure. That's great. Commissioner Hillman.

COMMISSIONER HILLMAN:

Yes, thank you, Dr. King. One of the reasons we're having this discussion today is because at some point during this year EAC was contacted by a few jurisdictions whose current systems were not certified by EAC but they needed upgrades or improvements or something done to them, and they were in a situation where their law suggested they needed some kind of national certification. And EAC did not come up with a solution for this transitional problem, and by "transitional problem" I mean, a machine certified by another entity. Now EAC has certification responsibility but does not have a

program in place to certify a “piece” of a system, if you will. So I kept nudging the question, what can EAC do to help jurisdictions in a situation where they’re getting an improvement, an upgrade, some kind of a fix and they’re not getting the EAC stamp of approval? I mean EAC is working very hard and has a comprehensive program in place to provide rigorous training, and it would be our hallmark to be able to have the EAC stamp of approval on equipment and upgrades. And this is an interim because I expect it will be a few more years where jurisdictions are going to be using these systems. So the discussion about logic and accuracy testing -- and for my own digestive purposes, when Georgia has to do an upgrade or a fix to a system, and bear with my lay person’s language here, what do you all do to test that system before you get to pre-election logic and accuracy? That is, how do you know that the fix or the upgrade is in fact the correct thing that has been done and is working to either improve or upgrade or fix a problem?

DR. KING:

Okay, well, that’s a great question. And we’re in the process right now of planning a test for a certificate upgrade, a security certificate upgrade to the system. I think the scenario that I’ll describe is a best-case scenario and for us “best” means time...

COMMISSIONER HILLMAN:

Means what, please?

DR. KING:

Time. We’ve got time to think in unstructured ways. We’ve got time to pose questions that don’t need to be answered immediately.

So I like to separate that from a situation where a jurisdiction might find themselves with an anomaly in mid October that has to be addressed before the election.

The first thing that we do is, try to fully understand and assess the problem that the fix addresses, because one of the things that we want to make sure of is, that the fix is in fact a match for the problem and that the problem is not a symptom of some other anomaly in the system. So first a detailed analysis of what is the problem.

Second, can we reproduce that problem reliably? And I think one of the challenges that all of us who hear complaints from voters about the voting system is how difficult it is to recreate an event, that is essentially a very private event between the voter and the system, is to recreate that event reliably to understand the scope of the problem. So the first thing is to make sure we understand the problem and isolate the problem. The second is to reproduce it.

Third is to look at the proposed solution coming from the vendor. And I would say even though our vendor is Premier, it wouldn't matter whether it's Premier or any other vendor, we require independent verification of the vendor's solution. So just the fact that the vendor says, "This will fix it" would be immaterial to us. So we have to independently verify that that fix will in fact address the problem and creates no unintended side effects of that. That can take -- these first three steps that I have described can take a month, two months depending on how much time you have available to work on it.

Third, is, we have to look for a window of opportunity in which to implement the fix and procedures to implement that fix. And in this election cycle in Georgia we'll hold five state wide elections this year. Our code requires that units not be touched 45 days before an election and 30 days after an election. So one of the dilemmas is finding an operational window into which whatever it is that you plan to do to that system can be done. And then finally testing it, once it's done, at an acceptance level on a unit-by-unit level throughout that system so that you can ensure that the fix has been properly applied, the condition no longer exists, or whatever problem that it was designed to address has been resolved and then documenting that process. So, for us in an ideal situation, a state wide fix of our voting system we think at a minimum takes us six months to do from identification through resolution. And that's under ideal conditions. And, as you know, there's very few six-month windows in an election. So it is a problem.

COMMISSIONER HILLMAN:

Does that six month include a certification? Or is this post-certification? Or where does that fit into the certification?

DR. KING:

If certification is involved -- we take the position in Georgia that state certification -- a part of state certification should precede Federal certification. And the reason for it is this, is that in order for that system to pass our state certification test it has to be in compliance with Georgia statute, code, rules and regs. It has to work in the State of Georgia. If state certification follows Federal certification and a deficiency is identified that requires that system

to be modified and moved back through Federal certification, then your window of opportunity may be gone. So in the case that you're describing, we would begin our state certification testing in terms of the design test of concept to ensure that that fix works concurrently with it moving through any kind of Federal certification.

COMMISSIONER HILLMAN:

And for what I'll call last-minute anomalies, you're in a very close window before the election but there's clearly an anomaly and it doesn't have time to go through such an elaborate process, it certainly doesn't have time to be certified, what are some of the solutions or approaches to that kind of -- beside praying?

DR. KING:

Well, you know, I was at Georgia Tech last week and a professor there said, "You know, voting systems aren't rocket science."

COMMISSIONER HILLMAN:

They're not what?

DR. KING:

They're not rocket science. And I said, "No, it's far more complicated than rocket science."

CHAIR RODRIGUEZ:

Yes, exactly.

DR. KING:

In that when NASA decides its systems aren't ready to go...

COMMISSIONER HILLMAN:

They don't go.

DR. KING:

...they scrub the launch. And I said, “We’re going to have an election November 4th and if we’re ready it will be a great one. If we’re not ready, it won’t be so great. But there’s no question that we’re going to have one.” So the issue that comes up is, in these worse case scenarios, what do you do? The first thing in my response is, I’m a technologist that answers to the Secretary of State who is the sole certifying agent in the State of Georgia. So if the Secretary of State, who is the Constitutional officer responsible for election, says, “We move forward with the system,” then our job becomes to figure out the best and the safest way to do that.

In situations where we have this tension between the need to adhere to the stasis, to the certified system versus a known anomaly that can jeopardize the integrity of the election, I think the jurisdiction has to come down on the side of the integrity of the election and has to look at whether or not they have procedures that can be invoked that allow the chief election officer of that state to certify that system, either provisionally for the course of that election, or to make whatever other decision is made.

So without dodging your question, if our Secretary of State came to us and said, you know, “What are the things that we need to do to test the system” we would come with as rigorous a plan as resources and time allow. But it would be inappropriate for me to recommend to her, or to any other jurisdiction, what their position would need to be, vis-a-vis, moving outside of Federally certified systems for use in election.

COMMISSIONER HILLMAN:

Your analogy about scrubbing a launch is great and I hope you don't mind if I use it because I very often try to explain to people we've got -- "we" the election community at large -- we have a fixed schedule.

DR. KING:

Uh-huh.

COMMISSIONER HILLMAN:

We've got to be ready to go, all systems ready to go whether we are or we aren't. And it is a lot more challenging than a lot of other disciplines within Federal government, particularly the way Federal government is designed to work.

What is an appropriate response to people who suggest, the fixes and upgrades offered by vendors don't work? You know, I mean I had an experience where the people who fixed my furnace had to come out ten times in a row until they finally realized they were using faulty parts. Once they realized that, they fixed it and it went. Well, the only way I know how to test my furnace is to put it on...

DR. KING:

Uh-huh.

COMMISSIONER HILLMAN:

...and it either works or it doesn't work. So is logic and accuracy testing a pretty sound way, irrespective of certification processes, a pretty sound way to say, "This is the best way we know or we have to know if a fix works"?

DR. KING:

Well, in a given jurisdiction it may be the best way. And I think you would need to look at what are all the methods -- some of the methods within that jurisdiction for assuring the correctness of those systems. I would encourage jurisdictions to expand their testing so that the L&A becomes the tip of the iceberg. It's among the most visible forms of testing. And I have to say I think it really serves a very neat purpose. It's a very public interchange between the election officials and their constituents. So I would never want to see it done away with. I would never want to see that feature of it done. But depending on the rules with that jurisdiction it may only be looking at a subset of the risks that are associated within that system. For example, correctness of the layout of the ballot. You know, in the old days on lever machines could you vote a straight party ticket if you pull this lever? Those kind of things. And what we now know about voting systems that they're far more complex. There's issues related to proper tabulation, uploading of information, post-election reporting that may not be addressed in L&A. And I think that testing should be assessed within those jurisdictions and expanded, if needed.

But going back to your initial question, which is, how can we respond to legitimate questions about the testing that is done to our systems, I think that's evolutionary. I think that we need to listen to people who are asking us about testing. We need to understand what their concerns are and, if possible, identify where those concerns are addressed in either the Federal certification testing, the state certification testing. And so, certainly, one of the things that jurisdictions can do in preparation for those questions is to

understand the whole testing regimen, because it may be true that a feature that a concerned citizen is asking about is not addressed in L&A but it's addressed here and here and in other parts of the testing regimen that would satisfy that person asking the question.

COMMISSIONER HILLMAN:

And I just have two more questions. You caused me to think about something on the calibration comment about the 6'2" voter. I began thinking about....

CHAIR RODRIGUEZ:

6'10" I think.

COMMISSIONER HILLMAN:

6'10"?

DR. KING:

Yes.

COMMISSIONER HILLMAN:

Seven foot?

DR. KING:

Yes.

COMMISSIONER HILLMAN:

Okay. I began thinking about other touchscreen mechanisms, and I don't believe I have interacted with a touchscreen mechanism any place else where the calibration -- where I get to control the angle of the screen. I mean I'm thinking about the ATM machine. I'm thinking about the little gadget at the supermarket where you -- those things are pretty stationary. And I found myself doing like this [indicating] trying to...

DR. KING:

Uh-huh.

COMMISSIONER HILLMAN:

...be able to see, to read, or if I go through the drive-in, you know, is it in the right place for me. But are the calibration mechanisms, if you will, of voting systems too sensitive? I mean I'd like to think that if the thing was hanging upside down from the ceiling I should be able to vote on it and get an accurate recording.

DR. KING:

I think that's a two-part question. One is that all the contemporary voting systems have as a feature a verification process for the voter. So I don't know that voters end up voting incorrectly on poorly calibrated screens. Perhaps some do, but I think for the most part the reason they make poll workers aware of the problem is that they identified that their selection was not as they intended. So to me it's kind of a two part. I think it's an inconvenience to voters, and I think it gives them concern and rightfully so. I do think whether you're in a wheelchair and you're sitting at a table top voting or whether you're 6'10", the system ought to perform across whatever range of physio types that we know voters possess.

But the calibration issue is -- it's frustrating for us because it's one of the easiest things there is to do in L&A and often what we think is, there's no excuse for not doing it because you have to pull the units out, you have to power them up, you have to bring up the ballot style. It adds 20 seconds to the overall process per unit. And it shows I think due diligence and it shows respect to the voters that we care enough in our jurisdictions that we're going to get

these machines in as good a working order for this election as possible.

I don't have a good basis of comparison of the DRE touchscreen technology to other forms. I do know that in the state of Georgia our equipment is now eight years old and I suspect that newer generations of touchscreen technology will be improved over the generation that we use in the State of Georgia.

COMMISSIONER HILLMAN:

And do you all test machines to fail systems -- voting systems to failure?

DR. KING:

Yes, we do.

COMMISSIONER HILLMAN:

Under what circumstances?

DR. KING:

Every one we can think of. And that's a part of what we do at the Center, is we try to survey the literature, we try to see why systems are failing in Ohio, in Maryland, or whatever jurisdictions may be using comparable technology. One of the things that we're blessed with at the Center is we have a fairly large staff of undergraduate and graduate students that we can assign to the very monotonous task of hand voting, you know, 200,000 votes on a unit. And that takes a couple of weeks of persistence. So we do test systems to failure in terms of their logical capacity. We don't test them to failure. We don't do like the drop test or what is sometimes referred to as the shake-n-bake test, but we do test them to logical failure.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

Thank you, Commissioner Hillman. Ms. McRill, after Commissioner Davidson goes through her questions I'm going to offer you an opportunity to either ask Dr. King a question or add anything to his presentation.

Commissioner Davidson?

VICE-CHAIR DAVIDSON:

Commissioner Hillman did a very thorough job, but there's one question I have that I'm sure that you do. It wasn't really clear, but I think it's a very valid type of test that needs to be done. At the time of receiving new equipment or at the time of receiving, we'll say, an upgrade to your system whether it's firmware, software, whatever, do you do an acceptance testing of that type at that point when you -- when I say an "acceptance testing" that's different to me than the pre-election testing. So you're making sure that what you're supposed to be getting is what you received.

DR. KING:

Yes, that's correct. We distinguish between state certification testing, which is testing of the concept of a model, if you will, to acceptance testing which is testing of the individual units. We acceptance test every new unit that is received for use in the State of Georgia. We acceptance test every repaired unit. If a unit goes out for repair and comes back, it must be acceptance tested before it can be used. And we acceptance test every unit that a county election official requests us to test if a voter makes an inquiry into the status of a piece of equipment. And those tests we always try

to do with media and the person who made the complaint there, so that they can look at the test script, watch us do the test and look at the outcome of the test.

Testing after upgrades is a pretty rare event. We've done it twice now in the State of Georgia, and our code requires us to test every unit in place in the county. So for us that's about 26,000 DRE units and 6,500 ExpressPoll units. So we are committed to running a stable system. So we make changes very, very rarely. And, as I said, we will have a change coming up due to an expiring certificate. We're scheduling the upgrade for the beginning of January. We'll have a state wide election. We'll have a runoff. We know we'll have a runoff in December, and it will require our staff to go to all 159 counties and test every piece of equipment against our acceptance test protocol which will be modified to incorporate the new certificate in it. So each time we do an acceptance test round we have to go back and compile any changes that have occurred and make sure those are reflected in the test.

VICE-CHAIR DAVIDSON:

Very good. Thank you so much.

CHAIR RODRIGUEZ:

Thank you, Commissioner Davidson. Ms. McRill do you have anything to add?

MS. MCRILL:

No questions, but just a comment I'd like to make. I have to admit that when I learned that I was going to be sharing the podium with Mr. King I was a little intimidated by that. It's sort of like the country mouse and the city mouse, you know.

In Michigan we have 1,600 election officials who prior to each election, sometimes at the coffee table, are marking up their charts of pre-determined results and marking up their test ballots. Oftentimes the clerk and deputy clerk are husband and wife, you know. That's how these things are done as opposed to, you know, the Kennesaw State operation that I have to say I'm very impressed with and very envious of. All electronic voting systems and changes to electronic voting systems in Michigan do have to be ITA tested and approved. So when it comes to the shake-n-bake types of testing and testing to failure, we rely on the ITAs for that type of testing. And then beyond that, because we have very comprehensive L&A testing requirements we believe that we're able to send this voting equipment out to the polls on Election Day with confidence that the equipment will in fact perform properly and that the programs have been properly prepared and ballots and so forth.

And one of the beauties of optical scan technology is, of course, that if the equipment were to fail we have the physical ballot we can go back to. If we had to hand count, we could hand count. Knock on wood, I don't recall in my 30 years of experience that we've really had to do that. Recounts are conducted by hand. That is all state authority, our recounts. But again, you know, we have that ballot to fall back on if there were ever a situation where we had, you know, a system failure within a jurisdiction or beyond.

So we're pretty comfortable, you know, with the systems that we've implemented for use in the state.

CHAIR RODRIGUEZ:

Very good. Mr. Hancock, do you have anything to close with?

MR. HANCOCK:

No, Madam Chair. I'm just thankful for the opportunity to get this information out to the public before the election. Thank you.

CHAIR RODRIGUEZ:

And as the Assistance Commission that's what we're supposed to be doing, so I thank you very much for assembling this panel...

MR. HANCOCK:

You're welcome.

CHAIR RODRIGUEZ:

...and helping us plan this meeting.

MR. HANCOCK:

Thank you.

CHAIR RODRIGUEZ:

Thank you both very much.

MS. MCRILL:

Thank you.

CHAIR RODRIGUEZ:

Okay, I'm going to try to get through three agenda items before we break for lunch because we want to resume at one o'clock.

So first under new business -- Commissioner Hillman has language for the final Policy for Notice and Public Comment, so we'll go back to that. And the motion to adopt is still on the table. Commissioner Hillman.

COMMISSIONER HILLMAN:

Okay. So we came up with some suggested language to amend the final Notice and Public Comment Policy that would address lack

of clarity in the section about “Equal Ability to Comment.” We’ve written out, and I will call out to you, what we’ve proposed would be the amendments.

Under Section II “definitions,” we would add a C, “proposed policy or rule.” And the definition would be, “Any policy, advisory, manual, procedure, regulation or rule covered hereunder that the Commission has voted affirmatively to post for public comment.” So we’re adding a definition of “proposed policy or rule,” and those are the terminologies used throughout this document.

Then on page four under V C, the “Equal Ability to Comment,” we would strike two words in line one so that the first sentence would read, “Under this policy, no proposed policy or rule shall be released to any outside party,” et cetera, striking the words “draft or.”

Under Section VII “consideration of comments,” we just use the defined term “proposed policy or rule” so that the last sentence on page four under “consideration of comments” is, “In the final consideration of the proposed policy or rule.”

And then under Section VIII “adoption of a rule or policy of general applicability,” we insert the word “proposed” so it would be “No proposed rule or policy of general applicability.”

And those would be the amendments I would offer to try to clarify the circumstances under which a document should not be released or distributed prior to its posting for public notice and comment.

CHAIR RODRIGUEZ:

Okay, so we have an amended proposed Notice and Public Comment Policy. Commissioner Davidson do you have any reaction to the clarifying language?

VICE-CHAIR DAVIDSON:

I think that this really clarifies the intent that Commission Hillman had stated when we first reviewed the Proposed Notice and Public Comment Policy. And I appreciate her willingness to work on that and clarifying it so that everybody would know that we're not trying to eliminate that openness beforehand is just once we have the rule and it's ready to go out.

CHAIR RODRIGUEZ:

Very good. Then are we ready to vote?

COMMISSIONER HILLMAN:

I think so.

CHAIR RODRIGUEZ:

Okay. All those in favor of adopting the proposed Notice and Public Comment Policy with the amendments please indicate by saying aye. Any opposed?

[The motion carried unanimously.]

COMMISSIONER HILLMAN:

And just so...

CHAIR RODRIGUEZ:

It's adopted.

COMMISSIONER HILLMAN:

Thank you. As a procedural matter, there will be a publication of the final rule in the Federal Register. So it goes out again to the

Federal Register, but it's just publication to say this is the final rule and this is what EAC will be doing.

CHAIR RODRIGUEZ:

Very good.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

And we don't have to -- do we have a separate vote on that...

COMMISSIONER HILLMAN:

No.

CHAIR RODRIGUEZ:

...or is it inherent in this action?

COUNSEL HODGKINS:

The adoption is sufficient.

CHAIR RODRIGUEZ:

Okay, great.

All right, then. Under New Business, Ms. Hodgkins will update us on the final Administrative Regulations and Consideration of Proposed Administrative Regulations.

COUNSEL HODGKINS:

Commissioners just to, well, actually add to what Mr. Wilkey has already told you as part of his Executive Director's report, I'm pleased to report that the Commission has, in fact, finally adopted two of the three sets of Administrative regulations. Those regulations includes ones under the Freedom of Information Act, the Government-in-the-Sunshine Act, Privacy Act, those that deal with the production of witnesses and documents in third-party

litigation, standards of conduct for Federal employees and non-discrimination on the basis of handicap in EAC programs. Those documents have been submitted to the House Administration and Senate Rules Committee pursuant to the Congressional Review Act and they had been submitted to the Federal Register for final publication and, in fact, we believe that they will run today. So that is the update on those.

And I bring before you today, for your action, the third set of Administrative regulations. These include regulations on non-discrimination in Federal financial assistance programs that are offered by EAC. So grants, contracts and other cooperative agreements, should we enter into any of those, these regulations would govern those recipients in terms of prohibiting any discrimination on the basis of age, race, color or national origin. In addition, the packet that you have in front of you would include a codification of Circular A-102, which is the Common Rule. It is commonplace for agencies to actually codify their own text of the Common Rule. It is identical to the other text that is promulgated by other agencies but gives, in fact, those recipients of Federal financial assistance offered by the EAC a place where they can locate the text of the Common Rule.

From a procedural standpoint, what we would recommend at this point is that the Commission adopt for proposal these last set of Administrative regulations. From that point forward these do require a Paperwork Reduction Act process in that the regulations, particularly those with regard to discrimination or anti-discrimination provisions, require the collection of certain information. So in order

to get the appropriate approvals we do have to go through a Paperwork Reduction Act process, which requires two 60-day comment periods. We will be taking comments through various different sources; via email to the havainfo@eac.gov email box, via mail to our address at 1225 New York Avenue, N.W., Suite 1100, Washington, D.C., 20005. We will also be taking comments through the federalportal@regulations.gov. And we last will receive comments via fax to our fax number here at 202-566-3128. At the end of these comment periods this document will come back to you for final approval, and again, just as you did via tally vote in the last few days adopted the first two set of regulations. Finally, after that is complete, we will submit them, of course, to our House and Senate Oversight Committees under the Congressional Review Act and submit it for final publication to the Federal Register.

Let me back up and just say, I know that you all like to do these adoptions in public meetings, as we are doing today, and for the public's consideration to understand why you all did this via tally vote the last two sets of Administrative regulations. First of all, we felt that it was non-controversial in that we did not receive any comments to those first two sets of regulations. Secondly, we were bumping up against the end of the Federal fiscal year and in order to obligate funds properly to have these items published we needed to take that action in advance of today's meeting as our cutoff date was prior to today's meeting.

So with that I would certainly recommend for your adoption to propose the third set of Administrative regulations.

CHAIR RODRIGUEZ:

Thank you. Is there a motion to adopt the proposed set, the newest set of proposed regulations for the comment process as outlined by the Counsel?

COMMISSIONER HILLMAN:

So moved.

VICE-CHAIR DAVIDSON:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to propose these rules for adoption.

COUNSEL HODGKINS:

And publication.

CHAIR RODRIGUEZ:

And publication. Is there discussion on the motion? All those in favor of the motion indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

The motion carries and so we continue our progress on our Administrative regulations work. Very good.

Now Ms. Hodgkins again will brief us on an issue regarding the 2008 Obligation Requirements. And this, in our opinion, is of particular interest to the states right now.

COUNSEL HODGKINS:

Thank you, Madam Chair. I know that this is an issue of great importance to the Commission, as well as to the states that are recipients of Federal financial assistance from the EAC. So we wanted to take the opportunity to sort of outline the process that we've been involved in over the last several months.

As you have noted in the past, and has been informed to the states in the past, the appropriation in fiscal year 2008 of $115 million to EAC for distribution as HAVA requirements payments was made as one-year funds. We obligated those funds, as we have with previous HAVA requirements payments, by operation of law because they are formula grants. EAC does not have discretion in the distribution of those funds. Actually Congress has defined a formula by which we distribute those funds to the state.

Recently the Government Accountability Office has questioned the status of those funds are formula grants. So in following up on that, our Inspector General has requested a formal opinion of GAO as to whether or not those funds are in fact formula driven or because there are additional restrictions or conditions, if you will, on the distribution of those funds, for instance the production of a state plan and the appropriation of a five percent match by the states, whether that puts them into a different category of grants other than formula grants.

GAO has informed us that they are still on track to give us an opinion by September 30 of this year. But as you are probably aware, the issue is, that if those one-year funds expire at the end of this year without proper obligation, which by the way, we think that we have properly obligated them by operation of law, but if GAO comes back and says that we have not properly obligated them by operation of law, then those funds will expire at the end of the year. So that's the critical juncture that we're at. And we believe the GAO is probably going to meet us at the finish line with very little

time for us to be able to digest the opinion before the end of the fiscal year.

CHAIR RODRIGUEZ:

Thank you. Are there any questions or comments by the Commissioners?

COMMISSIONER HILLMAN:

Julie, since learning about this, I have been trying to figure out, was there anything anywhere along the line that would have triggered to us that that opinion that GAO verbally expressed or suggested was floating around anywhere? I mean, I'm just trying to see if in the early days, 2004-2005, we missed something.

COUNSEL HODGKINS:

No, Madam Commissioner, I don't believe that this question frankly has ever come up in the context of the Help America Vote Act requirements payments. And let me just clarify, GAO has not given us an opinion on this issue, verbal or written, but they have questioned this and said that they are looking at this issue to determine whether or not the requirements payments are, in fact, formula grants.

In fact, our research indicates that GAO has issued no less then four opinions on this type of issue in the past with similar programs, where funds are distributed by formula, where there were additional restrictions, such as a state plan or matching funds requirements, and they, in fact, found that the obligation by operation of law was proper. It actually came up in the context where they had either under-distributed or improperly distributed grant funds, those funds had expired and then the recipients had

come back and made a claim for those funds. So it actually went a step further in that GAO said, not only was the obligation proper but you owe that money and you can, if you will, re-obligate expired funds in order to satisfy that obligation.

COMMISSIONER HILLMAN:

And just one final point is that I don't recall anything in discussions with General Services Administration in 2004 when they were transferring the payment information they had made in explaining to us in the beginning of the Election Assistance Commission about that process anything about this. So it's just, I guess, if you wait long enough you get new information or perspectives.

COUNSEL HODGKINS:

Let me just add that in addition to, of course, seeking this opinion from GAO, the Election Assistance Commission has also notified the Office of Legal Counsel with the Department of Justice, which is the executive branch agency charged with giving advice to other executive branch agencies of a legal nature. We have not requested a formal opinion at this particular time, but we have informed them of the issue and the question that is pending before GAO, so that should we need to draw upon that resource they will be informed and ready to do that.

CHAIR RODRIGUEZ:

Madam General Counsel, today is September 18th. Is there any opportunity for us to request a preliminary sense of what the GAO's opinion might be? Do they ever -- is there a process for something -- I mean it would help us a lot to know what they're thinking.

COUNSEL HODGKINS:

I don't know that there's a formal process for that. My experience is, you know, that you can always ask. The only thing that they can tell you is, no. So, you know, certainly we can make that request and see if they'd be willing to meet with us and have a discussion, but my sense is that they want to issue this as a written report.

CHAIR RODRIGUEZ:

And we've notified the states through this letter and have we made any -- and the Office of Legal Counsel. Is there any other stakeholder group that we have made aware of this issue?

COUNSEL HODGKINS:

I'm not aware that we have sent any formal correspondence to any other stakeholder groups. Obviously, the recipients of the Federal funds being the key...

CHAIR RODRIGUEZ:

Primary, uh-huh.

COUNSEL HODGKINS:

Primary group.

CHAIR RODRIGUEZ:

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

I think at one of our briefings that you have told us, and I would like for you to go into it a little bit if you can, will this affect other agencies if they come down with a decision like this that would affect us, that kind of a decision? Because this is really off of the charts of what you've seen in the past, is what you've told us.

COUNSEL HODGKINS:

Yes. To answer your question briefly, yes. Now let me diverge just a second, and that is, that GAO recognizes when they questioned this issue that this is an issue of first impression. There are generally considered to be a couple of different types of grants; block grants, competitive grants and formula grants. So this would, if you will, create some fourth category, yet undefined, type of grant. So this would be a whole new ballgame, in terms of what is currently understood about Federal financial assistance.

Our preliminary research does identify other agencies that have formula grants of this nature that have additional conditions upon the distribution of the funds like we do, either state matching funds, state plans, those sorts of things. So we believe that it would impact other agencies.

CHAIR RODRIGUEZ:

Anything further on this matter? We will of course -- once the GAO issues their opinion it will be posted by them. And we will, of course, make it available to the world and then determine our next step, as close to immediately after receiving that, depending on how it comes. Thank you very much.

Okay, our final issue before lunch, Mr. Cortes will discuss comments received on draft EAC Guidance to States Regarding Updates to State Plans.

MR. CORTES:

Good morning, Commissioners. You have a document before you. Back in July, as you remember, we discussed draft guidelines for giving states -- setting guidelines for states as to when their actions constitute a material change in their state plan. This was through a

vote of the Commission, published in the Federal Register for public comment. The comment period ran from July 10th through August 11th. We received a total of six comments that came in regarding this issue. They came mostly from states and then from one non-profit organization. So there was some interest in this, and there's been some discussions, you know. The Commissioners have had discussions about this in the past. So what I'm going to do today is summarize the comments and give a little bit of discussion as to how the staff is recommending we deal with those comments. And then we will move -- I believe on the October 7th meeting agenda we will have a revised set of guidelines for the Commissioners to consider. Based on these comments and based on the Commission discussion today, the staff will take all that into consideration and produce a revised set of guidelines for the Commissioners to consider at that meeting.

The first three comments which came to us from the State Boards of Election in Kentucky, North Carolina and Maryland were all essentially the same comments and referenced -- the North Carolina and Maryland comments actually referenced the comments submitted by Kentucky. And there are a couple of points in those comments. The first point had to do with the applicability of the Common Rule to the administration of HAVA funds and the Commission's -- essentially the comment stated that the EAC does not have a role in approving state plans. I want to address this for a second because I think based on the comments that have come in and some phone calls we have received I want to make it clear that the EAC does not approve and has not previously approved

state plans. Our role under HAVA is to take the state plans that have gone through a public notice and comment process and the creation through a board of stakeholders at the state level has gone through that process, our role is to take that plan and publish it in the Federal Register for an additional comment period. The EAC's role is not to approve state plans. So I did want to clarify that because it did seem to be an issue that came up in a couple of the comments.

COMMISSIONER HILLMAN:

Can I just on that point ask a question, please? But is it not our responsibility to make sure that the state plan includes the requirements of HAVA?

MR. CORTES:

Correct. We would review the plan to ensure that the state has actually included the 12 things listed under Section 254 for things that have to go in the state plan. But we would not, for example, you know, where a state talks about implementing the requirements of Title III, we would not for instance approve what the state is proposing in terms of how they're going to meet those requirements. HAVA leaves that up to the states. Our role, I believe, is to review and make sure those sections are in there. How broad or how specific the state chooses to make the state plan is up to them through the public process they're supposed to go through under HAVA. We just make sure that those points are addressed in the state plan and then publish it in the Federal Register.

COMMISSIONER HILLMAN:

Thank you. And that's the way we've been operating since EAC was established.

MR. CORTES:

Correct.

The second point about the application of the Common Rule, this document was prepared obviously before our meeting with the Office of Management and Budget and so I think that conversation was had a bit earlier during the Maintenance of Effort discussion, but it is our understanding that because these are viewed as grants the OMB circulars are applicable to the funding under HAVA.

The second point they made had again to do -- was again related to prior approval of the plan, and I just addressed that issue. We believe basically that the approval process contemplated in HAVA is through the group of stakeholders that the state is required to bring together to create the plan.

The third point in these three comments was essentially that the proposed guidelines were not going to be useful to the states and it seemed as unnecessary guidance from the EAC. Basically it was along the lines of, "Well, the states will know when to update their plan and we don't need this additional info from EAC to know when to update the state plan." I would like to address that because we have since the agency was created, before I got here I know that we have had an ongoing issue with states coming to or requesting guidance from EAC as to whether or not an action they were taking would require an update to the state plan. I think that's one of the reasons we're at the point we are now with drafting these guidelines. And although some states may not find it useful I do

believe that the majority of states out there will find it useful to have some written guidelines because the Common Rule and the issue of state plans in the Common Rule and what's in HAVA is fairly vague as to -- what's in HAVA is fairly vague as to a material change. And so I believe as the agency charged with giving state's advice on their funding, this information will be helpful to the majority of states so that when they're going through the process of making changes they can take a look at the document and say, "Well, is what we're doing -- will this be a material change?" And they have something there that's laid out for them that can give them some guidance on that.

The next comment was sent in by NASED, the National Association of State Election Directors. It did identify some of the same points as were identified by the other three commentors. However, an additional point that they discussed was again whether or not the funding in HAVA were grants. The argument that was made in the letter was that -- or in the comment was that the term "payments" were used for Sections 101, 102 and 251 funds and that there were other sections in HAVA that utilize the term "grants," and that because there was this distinction in the law that the funding that we distributed was not in fact grants and so the circulars would not be applicable. Again I think that was answered -- that discussion took place at length earlier in this meeting with OMB's guidance to us that, "Yes, these in fact are grants that we have given out. They are Federal grants." And that, again, aside from the guidance from OMB, we have additional guidance from the Government Accountability Office in their red book, "The Principles

of Federal Appropriations Law" and also in the Grant and Cooperative Agreement Act. So I think we have at this point established fairly well that the funding is grants, and so we do not agree with these comments.

An additional point made in this comment had to do with the scope or objective of the project. And basically there was a concern that the EAC was telling states that they had to provide very specific details about every implementation step they were going to have when implementing the HAVA requirements. Again we do not believe that's what we are trying to do. We do think this section can be clarified because it will be up to the states -- it is up to the states as to how broad or how specific their state plan is. HAVA sets, you know, what points they have to address, but it does not address the level of specificity required in that state plan. And so we understand that this is a concern and we think that the guidelines can be reworded to make that more clear.

The next comment was received from Verified Voting Foundation. Again this has to do with the scope or objective of the program, and the concern here was whether a switch from one compliant voting system to another type of compliant voting system would require a material change. And the commentor noted that they believe that if those changes were to be made that it was not EAC's role to step in and say that that would be a change; that it was up to the state to determine that and they felt that there would be an open process for discussing those changes at the state level. We agree with this and we think that the open process would ideally be the state plan revision process. We think that if a state

did in their state plan specify, for instance, that they would be implementing direct record electronic devices throughout their state and that was part of the planning process and they specify that, they later decide to switch and go to a fully optical scan system, I mean, that's a fairly significant change in how the state is implementing their requirements and we do feel that that would be a material change. Now again this depends on -- this would be on a state-by-state basis because some states were not that specific in their state plans as to what sort of equipment would be used. But in instances where it was very specific, we feel it should go back through the process.

The last comment was received by the California Secretary of State's Office. One thing that they pointed out was that it was not clear in the guidelines document the authority that EAC was exercising when putting out these guidelines and to specify that EAC is not, for most things, is not a rulemaking body and so that these were not actual regulations being imposed on the states but rather guidelines. And again there is a -- Section 202 subparagraph 4 talks about EAC's responsibility to provide assistance to states in the management -- provide management and training for their funding. And so we think that we can specify that more clearly in the guidelines document so that the public and the states are much more clear that this is not a regulation, these are guidelines being issued by the EAC in our attempt to help those states that have questions related to this topic.

An additional point that was made by California had to do with the length of time that a state plan update takes. And

obviously the process set forth in HAVA requires the chief state election official to bring together its group of stakeholders, you know. You mesh out what the state plan is. After that it has to go through a state public comment period. Once that state public comment period has ended the state should consider those comments, prepare a final plan and it will be sent to EAC, who then has to publish it in the Federal Register for an additional public comment period. We're talking about a several month process there. And their concern was that there are times in elections, obviously, as you were discussing earlier, where there are some immediate needs for election officials and they need to make changes because there's something that's not working. And they requested that EAC provide something in there which basically indicated to states that if they had to do that that the state plan should be updated as soon as possible after that change was made to notify the public. While we recognize this is important, this is a reality election officials face, we don't think we can address this in the guidelines. We do not believe that EAC can direct states to do that because HAVA specifically says that any changes to the plan cannot be implemented until after it has gone through this process. So although we do recognize that as a reality and it is something that states face, I don't believe it's something that we can address in these guidelines given the requirements in HAVA.

There was a point here about one of the sections discussed that changes in Federal law or regulation may require changes to the State plan. And the question for EAC was, given that we are not a regulatory agency when it comes to this matter, what

regulatory changes would we foresee that would necessitate this being in the guidelines? And I think we actually have a very current example that we discussed with OMB the other day having to do with the recently passed Transparency Act, and that requires certain reporting from grant recipients and from subaward recipients of Federal funds information that they have to provide to the Federal government regarding how awards are being made and other documentation. This is not something that EAC has put into place. This is a government-wide requirement and there are regulations being issued that all Federal agencies have to follow. And so that would be one instance where, you know, HAVA requires the state to indicate how they will monitor subawards or funding that goes to counties and local jurisdictions. And so this might impact how states implement that state plan. And that's one very current example of Federal regulations that might impact this, though they're not issued by EAC. So we believe that should be left in there.

And those are essentially -- I mean all the other points addressed in California's were addressed in prior comments, and so that's kind of a summary of the public comments that we received. Again, we want to give the Commissioners opportunity to digest these comments and give us their feedback as to what additional concerns, you know. Now that these have been raised through the public comment process, does this bring up any additional concerns for Commissioners or suggested ways of improving the proposed guidelines? And what we recommend is that once we get that feedback from Commissioners, hopefully

through some of the discussion here, but also in the coming days if there's any specific language changes that you would like to provide, the staff will take that and prepare revised guidelines for you to consider at the October 7th meeting.

CHAIR RODRIGUEZ:

Thank you, Mr. Cortes. Are there any comments now on the substance of the guidelines regarding material changes?

VICE-CHAIR DAVIDSON:

I have a couple of things.

CHAIR RODRIGUEZ:

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

You know we're saying that these are not regulations, they are guidelines. But how can we really say that when our Inspector General goes out and utilizes these to write up the states as they're doing their audits?

MR. CORTES:

As far as I know, the Inspector General has not had any findings related to whether or not states have updated their state plan accordingly. Our Office of Inspector General, that's not something they have looked at in their audits to see if they have had material changes in their plan or whether or not those changes were made prior to the changes being implemented. So that's not an issue that has come up in the past.

VICE-CHAIR DAVIDSON:

I guess the specific one that I'm referring to is number three, the ten percent. That's the one I felt like that probably would be utilized in

the future and that one, you know, I think we've had some discussion is it really clear the ten percent? What is the ten percent from? And how it affects small states and how it affects large states. So that is one area that I guess that made me think about this issue and how that would be reviewed by the Inspector General as he went through it.

MR. CORTES:

I could request a meeting with the Inspector General to see how he would view this but, as I said, to date, the Inspector General has not used the State plans in their audit process.

VICE-CHAIR DAVIDSON:

And I know that you have said that states have called you and asked about this type of information on material change, but you've not received anything written from states asking for an opinion in these areas?

MR. CORTES:

We could go back through -- I know we have received emails, you know, over the years of states asking, you know. A very common thing we'll get is, you know, "We're planning on doing this," and they'll call us or they'll email us and they'll say, "Is what we're planning doing would that be a material change to our plan? Do we have to go through this process before we implement this change?"

VICE-CHAIR DAVIDSON:

And the reason why I brought it up is because, I mean, obviously NASED that's an organization that represents all of the states and so I brought it up because of that. We have a procedure set in place is what I think about for states to request and it's made very

formal and it's pretty well -- it is down to the timeframe and everything that it's adopted and sent out to everybody to use as guidelines. I was wondering -- that's the reason why I wondered why are we taking the step when we have not specifically been asked a question and it seems like we're getting objections?

MR. CORTES:

Well, that process has only been in place since April I believe, and so the questions related to this came in prior to that. You're right, we have not had any questions through the advisory opinion process related to this, but we think it's important that -- there were several questions raised because of the 2008 requirements payments allocations. There were several questions raised at the NASS and NASED winter meetings about updating state plans. And so these questions have been out there and we felt it was important to be proactive and provide guidelines for States to have, not just that they can look at when considering whether or not they should certify to get their 2008 payments but into the future. We know, for instance, that our Appropriations Subcommittee is recommending that additional requirements payments be funded in 2009. And so this question we realize is going to come up continuously and we wanted to try to be proactive and provide this guidance to states. In addition, we've gotten requests from, I think, all three Commissioners that are sitting here, to back probably around March or April related to this and to putting something together to give some guidance to states.

VICE-CHAIR DAVIDSON:

Well, I think giving guidance -- I mean we talked about state plans, not -- in my memory. But I guess what I had in mind for giving guidance to state plans may be different than what we're talking about today. I have a goal of one of these days being able to get to the crux of when we receive a state plan, what our requirements are going to be and meeting the needs so that states will know how long it will take us to review and to actually get things to the Federal Register, you know, get the approval to put it in the Federal Register, and to put some stipulations on us as well as what the states' requirements are. I think that sometimes things go a long way when we are stepping up and putting procedures in place for ourselves, as well as states. It goes hand-in-hand.

So my expectations was a little different I know than what the staff was and I know it's been frustrating for the staff, but that still has been some concern of mine that we're not putting things in place for ourselves either at the same time.

MR. CORTES:

We have been working on internal procedures. Internal procedures are one thing, but in terms of telling the states what they need to do that is a more complicated process, and that's part of what this document is meant to do is to provide some guidance to states as to what they need to do. At this point the only reason for a state to submit a state plan to us for publication is because they've revised it due to a material change. And so for States to know if they need to do that we thought it was important for these guidelines to be out there.

COMMISSIONER HILLMAN:

If I might, Commissioner Davidson's comments prompt me to say something. First of all, I don't want to be in a catch-22 situation where the states can say, "You didn't give us guidelines and therefore now look at the mess we're in" and then we proactively put together an approach to provide guidelines and they push back at us, "Why are you in our business?" I think it is EAC's responsibility to provide prudent guidelines as to what a statement in HAVA means. And the question did come up, "What is a material change?" And we did agree that we should make an attempt to provide guidelines to the states about material changes. And so I think it's appropriate for us to do this, and I don't see that EAC should be criticized that everything we do we think we're regulating. states know we're not doing that.

And the suggestion of a ten percent change or a five percent change in the spending within a budget is not a regulation. If we offer that as a guideline or a suggestion, it is exactly that. If the state wants to do it, fine. If they don't want to do it, that's their prerogative. But at least they won't come back to EAC and say, "Well, it would have been helpful if you had provided some guidelines." So I think it's appropriate for EAC and for the Commissioners to debate and discuss whether or not we want to offer to them a suggested percentage of change that might be worthy of them to consider with respect to any changes in the budget.

If I sound a little impatient about the states always criticizing us and reminding us we don't have regulatory authority, I don't think anybody can say an agency providing guidelines and suggestions

and definitions is instituting regulations. I mean, they know we're not doing that. We know we're not doing that. And I would hope they would allow us to do our jobs as much as they want us to allow them to do their jobs.

CHAIR RODRIGUEZ:

Thank you both, Commissioners. I'd like to, as a matter of scheduling, to take a quick lunch break. But this issue of grants, I'm concerned that just because we say that payments are grants the states might continue to challenge that, and so this is a looming issue.

My regret, and I do want to put this in the record, in our meeting with OMB, they didn't give us any -- well, maybe they did and I may have missed it -- but they didn't give us any supporting documentation to their statement that these are grants. And so, we've got to figure out how if we do ultimately adopt that as one of the principles of our MOE guidance, that we've got to be unassailable on that point. So I'll just put that on the record. And it will be something that we'll have to wrestle with, as we not only did our guidelines on material changes, but back to the earlier Maintenance of Effort guidance.

We're going to resume at one o'clock, and it's 20 minutes until one. So we're in recess.

[The Commission recessed at 12:36 p.m. and reconvened at 1:13 p.m. at which time Chief Operating Office Alice Miller was present on behalf of Executive Director Thomas Wilkey.]

CHAIR RODRIGUEZ:

Thank you very much for allowing us a few extra minutes for lunch. We have a couple more things to complete today before we end this meeting, and we're really looking forward to our next agenda item. I'll call on our Research Director Ms. Karen Lynn-Dyson to review with us the Alternative Voting Methods Study. And she'll introduce our speaker, Mr. Doug Lewis, but I just want to thank him for coming today given the fact that he came here from – well, by way of Austin from Houston. And we appreciate your commitment to this project to the EAC and hope that everything is okay at home for you.

MR. LEWIS:

Thank you.

CHAIR RODRIGUEZ:

Ms. Lynn-Dyson.

MS. LYNN-DYSON:

Yes, thank you, Madam Chair. Good afternoon, Commissioners, Ms. Miller, General Counsel Hodgkins. I come before the Commission today to introduce Doug Lewis, who is the Executive Director of the Election Center. Doug is going to present the findings from the Alternative Voting Methods study that the Center conducted under a contract for the U.S. Election Assistance Commission. For its contract, the Election Center was charged with creating a series of case studies about early voting, Election Day holidays, vote-by-mail, vote centers, weekend voting and voting in Puerto Rico. Pursuant to HAVA, EAC Research Department staff also conducted research regarding the advisability of a uniform poll closing time across the United States.

It is this combination of studies that I present to you today for consideration of adoption.

Section 241(b)(10) of HAVA requires the EAC to study "the feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time and establishing (A), a legal public holiday under Section 6103 of Title V, the United States Code, as the date on which the general elections for Federal office are held. Also (B), the Tuesday next after the first Monday in November, in every even numbered year, as a legal public holiday under such section. And (C), a date other than the Tuesday next after the first Monday in November, in every even numbered year the date on which general elections for Federal office are held. (D) any data described in subparagraph (D) as a legal public holiday under such section."

Each alternative voting method researched by the Election Center and described in this report is considered feasible in nearly every state. As the study notes, however, not every method would be successful in every jurisdiction, nor would every jurisdiction be able to handle the costs of implementing each alternative voting method. The Alternative Voting Methods report that has been developed is meant to provide details about new or different ways of administering elections. By providing this information it is my hope that jurisdictions will have additional valuable information to review as they think about changes they might make to the administration of their elections. Certainly, states and localities would need to evaluate their own processes and circumstances

before any change in election administration would be considered advisable. For example, local and state election officials will need to take into consideration their particular jurisdictions' population density, the culture of voting, their ability to recruit poll workers before making any decision to implement a new alternative voting method.

The contractor, the Election Center, is to be commended for its successful efforts to collect the data for this report. In a moment, Doug of the Election Center, will describe a bit more about the research process that was used to collect this information and why the States of Colorado, Delaware, Illinois, Louisiana, Maryland, Oregon, Texas and Puerto Rico and were selected for case studies on various alternative voting methods.

For the reader of this report, it will be interesting for him or her to note that even when jurisdictions do use the same alternative voting method, they do so with varying levels of success. For example, in the section of the report describing vote centers, there is a description of the successful implementation of the method in Larimer County, Colorado, as well as the problems that election officials experienced during the implementation of this method in Denver.

I would also like to call the reader's attention to the section of the report (on page 50) that discusses a uniform poll closing time. A uniform poll closing time has been proposed by many as a way of ensuring that voters on the West Coast are not affected by the announced election returns from the East Coast. In some cases, projections have been made about the outcome of the race based

on those East Coast returns while hours of voting remained in other parts of the country. Research shows that knowledge of these projections can influence voters.

However, as the readers of the report will discover, extending the poll hours raises many logistical problems and operational concerns. In summary, such a change would require some states to keep polling places open for 15 hours, while others would be unable to open their polling places for more than 12. Therefore, the West Coast-East Coast problem that we may be attempting to address may be creating other significant challenges and problems for voters and officials.

Allow me to make a few comments about the process that was used to review and vett this Alternative Voting Methods report with our key stakeholders. This report, that includes findings and recommendations about the feasibility and advisability of these various alternative voting methods, as well as the recommendations regarding implementation of the uniform poll closing time that I just referenced, was shared with the EAC's Board of Advisors on August 4-8 through our virtual meeting room process. During this five-day review period the Board was able to offer comments and suggestions. During this time the public was also able to review the report and view the comments offered by the Board. EAC research staff received eight comments on the report. These comments were integrated into the final report that you have before you today.

In summary then, I believe the work that was accomplished for this study is quite good and that the final product, that had the

benefit of review and consideration by a wide range of election observers and officials, is a valuable tool for all election officials who are experimenting with non-traditional voting methods. I recommend, after taking the opportunity to ask Mr. Lewis questions about the study's findings, that you adopt this report. Thank you.

CHAIR RODRIGUEZ:

Thank you, Ms. Lynn-Dyson. Mr. Lewis.

MR. LEWIS:

Thank you. You know, I think it's entirely appropriate that we're going to get to discuss alternative forms of voting at the time we're going to go through a historic election, and certainly as we get close to this it looks like we're going to have a tsunami in terms of just election participation in this election. And my guess is, is that while it won't be a perfect election, it rarely ever is in these deals where you've got that many people involved, it certainly will probably turn out -- not probably -- it will turn out as an accurate and honest reflection of the public will. And what you all have been tasked with in looking at by Congress and by groups that talked to you about all of this, is to look at what are some of the alternative forms of voting that are out there and then how can they be applied to make the process more open and more responsive to citizens throughout the country. And so, that's the result of what we're going to look at here in terms of the study.

Certainly, Section 241(b)(10) of the Help America Vote Act requires the EAC to study "the feasibility and advisability of conducting elections for Federal office on different days, different places and during different hours." There has been discussion, and

the Congress wanted you to look at, what about a legal public holiday for elections, or a date other than the first Tuesday after the first Monday in November, such as weekend voting and what have you. These issues and other forms of alternative voting were the results of these studies.

Early voting actually began in Texas. It was created there in 1987 to allow “no excuse” in-person voting prior to Election Day. Certainly, it allows voters to vote at any early voting location within the jurisdiction between 17 days before, up to four days before. Now the reason they originally -- in one of the versions of the thing they had it down to three days but they determined that wasn’t enough time to actually then get all the books updated and back out to the precincts so that they knew who voted early and what have you, and so it’s now back to four days.

The theory behind early voting, as a lot of these alternative forms of voting are that you all are going to get to hear and see all the time, one of the theories is always that it’s somehow going to magically increase voter turnout. It seems as we go through this you will see one or two that maybe do that, but for most they don’t. It does keep people involved. It did not increase voter turnout, but it does seem to have -- we don’t know the opposite effect, which is how many would not have stayed had we not done this. And so that’s one of the things we’re looking at.

Certainly, voters have more days to vote. The age-old constant complaint is whether or not some people have been disadvantaged by the fact that we hold elections on a Tuesday and during certain hours that then they may not be able to participate.

Early voting at least removes that barrier and brings people in because now they have lots of days in which to make their choices, including on weekends in many of these States that do early voting, and certainly in Texas. It lessens the strain of voting at the polling place on Election Day. And that is, as we're discovering and as we've discovered particularly in 2004, that's an important contribution to this because it does mean that those folks who really can't get around until Election Day certainly now no longer have to compete with another 30 to 50 percent of the voters who have already participated through early voting.

Voters clearly liked it. In the states that have it, those jurisdictions range somewhere between 30 percent and 50 percent of the voters are actually coming out to participate in early elections. And so that makes a very different kind of level of participation.

As of 2006, nine states reported they had Election Day as a holiday. And we looked at those nine and then chose Illinois and Maryland because they're two of the oldest states to have this and had the most experience with it, and so we looked at it. Illinois implemented theirs in 1943. Maryland has had it since 1882. When you look at the theory that Election Day as a holiday would create higher voter turnout, it does not, at least as we've seen from this. In 2000 the nine States that had Election Day as a holiday had 50.6 percent, while the other 41 States had 49.9 percent. In 2004 the nine that had Election Day as a holiday had 55.2 percent, and the rest of the nation had 55.3 percent. And then in 2006 of the nine States that had Election Day as a holiday they had a

turnout of 35.8 percent, while the rest of the nation had 37 percent. So there seems to be no correlation really between Election Day as a holiday and voter turnout.

In terms of looking at vote-by-mail, we went to Oregon because Oregon created this. And in fact we hired the guy that is principally the one that's given credit for creating vote-by-mail in Oregon to look at this. They created it in 1981. By 1987 most of their counties were using it for local and special elections. It took, however, in terms of gaining acceptance among the legislature and the Governor's Office, it took until 1998 before they could begin to use it for primary and general elections and Federal elections as vote-by-mail. November of 2000 was the first Presidential election as vote-by-mail and they had a 79.8 percent turnout as a result of implementing vote-by-mail.

General elections for State and Federal offices held as vote-by-mail with a 69 percent turnout. 2004 Presidential election 86.5 percent turnout. And the current data indicates that an increase in turnout is indeed a result of vote-by-mail. We don't know if that's a permanent change, and until we probably get another ten years in this we're not going to know whether or not that's a bounce effect or whether that settles in and results in a much higher percentage of folks, and raw numbers, of folks actually going to the polls.

The administrative effects of vote-by-mail are that you don't have any polling places, so you don't need to find available and accessible polling sites. You don't have any poll workers to recruit or train and you certainly have no long lines on Election Day.

We looked also then at vote centers. Vote centers were created in Colorado, two of the Commissioners' home state, and so I'm sure both are well acquainted with vote centers. We engaged Mr. Scott Doyle who actually created the first vote center to assist us with the study. And it's very much like an early voting site. This is really an extension of the early voting concept, but it's now applied to Election Day. It certainly means that the voter can live anywhere within the county and they can be able to vote. The difference is is that it's done on Election Day rather than in an early voting period. It's unclear right now whether the long-term effects will contribute to higher turnout. Certainly, the short-term effects seem to indicate at least slightly decreased numbers of turnout, but far easier for folks to find their polling sites. The number one complaint, as we know from other national groups that have done this, the My Vote folks and what have you who have done this study, says that the number one complaint of voters is that they can't find the polling site, while vote centers make it far easier to find them because they're in very well known locations on heavy traffic patterns and what have you. Any registered voter within the county can vote at any vote center without having to return to their own precinct. This is one of the complaints that we hear almost every election cycle from both voter groups, voters and politicians and newspapers, and what have you, that, "Gee why can't I just vote from wherever I show up?" Well, the vote center eliminates all that problem. It makes it where you can indeed do that. As a result, you end up with fewer provisional votes because you now get down to truly only those people who may not have done what

they needed to do or that there was some official error somewhere along the way. And so you end up with a whole lot fewer provisional voters. You need up to 50 percent fewer poll workers because you eliminated all of those little sites that you run now and you're going to a major site. You don't need as many poll workers in order to make all of that work. And, folks, when we're looking at a Presidential election you need 1.4 million poll workers nationwide. And the truth of the matter is, you know, we keep hearing people tell us that they want better poll workers. You know, "better" connotes choice. We're at the point if we stick a mirror under their nose and they breathe, they serve, you know. I mean that's just where we are. And so this is one of the advantages that you see when you get something like a vote center. Certainly, you need fewer polling sites and that, too, contributes to being able to administer an election on a better situation.

We looked at weekend voting because there has always been, and this has been around probably for the last 40 years that I've been in public policy work, there's always been the question about whether or not weekend voting would make a better through put and would increase voting turnout and so on. Well, when we looked at the states that had some form of weekend voting, you look at Louisiana, they implemented Saturday voting in 1959; Texas implemented Saturday voting in 1975 and then through their early voting program that would include the full weekend, actually two full weekends in most cases in 1987; and then Delaware implemented Saturday voting in 1978.

Voter turnout does not increase in either Saturday voting or

weekend voting in the states that have been studied. Voting is likely to cost more; higher weekend pay for facilities, maintenance personnel and building security personnel, overtime pay for election staff, and increased costs to rent polling sites.

Proponents indicate that more voters would have a better chance to vote than if voting were held on a weekday. If that's correct, it looks like early voting seems to have a better advantage there because it gives far more days than just two and it is not usually limited to one weekend only. And so if you look at what the opponents say, they indicate that weekend voting would conflict with religious events and family events. And in fact Delaware found that the complaints from religious groups led them to get away from Saturday voting and return to Tuesday voting. So you've got those.

Voting in Puerto Rico. Puerto Rico had some unique implementations that certainly I think are going to be studied by others as we go along. Prisoner voting, they've had that since 1980. They allow felons and state prisoners to vote. In November 2004 elections 5,102 votes were cast and of that 4,384 were actually validated as eligible to participate and participated. They created hospital voting. In 2004 they did a pilot program so voters could vote even though they were in the hospital and incapacitated and not able to participate in polling site location. So they had 70 hospitals that participated which resulted in an additional 2,673 voters actually getting to vote. They also implemented a domiciled and bedridden voters' program so that voters could vote from their homes where the poll workers actually carried the ballots in to them

and then certified that the ballots were legitimate and eligible ballots in order to be counted and cast.

And so that's pretty much the report that we have to you on what the alternative voting study said.

CHAIR RODRIGUEZ:

Thank you very much. I guess we'll accept a motion at this point to adopt the report and then discuss it. Is there a motion to adopt -- accept?

COMMISSIONER HILLMAN:

So moved.

VICE-CHAIR DAVIDSON:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt the Alternative Voting Methods study as presented.

And now discussion. Are there questions or discussion items for...

COMMISSIONER HILLMAN:

I do have some questions. Thanks to both of you for the presentation.

Mr. Lewis, going to Election Day as a holiday, was it just for the Presidential general or did those States have Election Day holidays for their other non-Federal?

MR. LEWIS:

They have it for non-Federal also.

COMMISSIONER HILLMAN:

Okay. It's not...

MR. LEWIS:

Particularly in the two that we focused on here. Clearly, yes, they use it for all kinds of elections.

COMMISSIONER HILLMAN:

Okay. And so is it a State wide holiday where, do you know if you looked into this, where overtime pay would kick in and the other cost issues that were associated with perhaps having election on Saturdays higher costs because it's a holiday?

MR. LEWIS:

They don't pay their poll workers higher costs, obviously. The poll workers are going to get the same amount of pay no matter when it is. The fact that it's a holiday doesn't affect them. What we found in both Illinois and Maryland was that the entire state doesn't shut down because it's a holiday. And, in fact, in cases what you were seeing was that it is a holiday for state employees and it was a holiday for some local jurisdictions, but not all. And so schools were not necessarily out. Some were, some weren't depending upon local option and jurisdiction. And so you had it where it was a holiday in the name of law, it was a holiday in that sense that state employees are off, but not really a holiday in any other respect.

COMMISSIONER HILLMAN:

Did it help with poll worker recruitment that it was a holiday?

MR. LEWIS:

It's a mixed bag. Certainly, Maryland I think indicates that they thought it was -- marginally increased their ability to have poll workers, but they thought that was really more due to the fact that schools in Maryland are closed as a result of Election Day and they

get to use the facilities and, therefore, some of those teachers do indeed participate.

Illinois was the other way. Illinois said, “Well, we don’t think it really contributes very much.” And in fact of all the state workers that are off no more than about three to four percent of the State workers actually participate as poll workers; that they seem to be either taking the day off or participating in the campaigns, not necessarily in the infrastructure.

COMMISSIONER HILLMAN:

And your report doesn’t summarize this, and forgive me I don’t remember if it’s detailed in the larger report, but looking at something other than Tuesday, that if it weren’t going to be weekend and it weren’t going to be a holiday but if people were voting on Monday or Friday would it matter versus a Tuesday?

MR. LEWIS:

And I don’t know that -- truthfully, Commissioner, I don’t know that we have enough information to answer that question yet. Certainly, when you look at early voting and you look at those patterns of early voting in the states that do that, you do see, you know, some fluctuation on the various days, but we don’t know whether that is because of the day itself or simply because that was the day that folks had time to do something and there wasn’t anything else competing with it. And so I don’t know that we’ve got enough data yet that says we can pinpoint what are the best days to hold this.

COMMISSIONER HILLMAN:

And my last question on Oregon. Did you have numbers as to what Oregon’s turnout was before it implemented vote-by-mail?

MR. LEWIS:

There's a chart in there where Oregon does -- some of this is, correct me if I'm wrong, there is a chart I believe that indicates what Oregon's participation was before this. In some cases there is significantly higher participation, particularly in their primary situation. I mean their primaries were down to where they were very small participation and now they're pretty large participation. And then they were showing, I believe, those -- it's been a while since I've looked at that chart itself -- but I think it shows that there has been a fairly -- I mean anytime you increase a vote 10 percent Statewide or more -- and ten percent is not meaning that you jump from 30 to 40. Ten percent is if you had an increase of 30 to 33. That's a 10 percent jump. That's a fairly significant jump. And so in this case their numbers show that, I think, the vote-by-mail has been far higher than it was prior to them implementing vote-by-mail.

COMMISSIONER HILLMAN:

So a casual observation of this study to date would suggest that vote-by-mail seems to...

MR. LEWIS:

Is one of those...

COMMISSIONER HILLMAN:

...directly contribute to higher voter turnout?

MR. LEWIS:

Right, but in raw numbers and in percentages.

COMMISSIONER HILLMAN:

Okay, thank you.

CHAIR RODRIGUEZ:

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

I haven't -- I'll be real honest with you. I did not read your whole study, but in your presentation you did go into an early voting by voting 30 to 50 percent of the people prior to Election Day did you find in those States really helped in lines that was at Election Day, you know, to control lines because there's fewer people voting obviously?

MR. LEWIS:

Well, you know, if you have a massive turnout, for instance as we did in 2004 and where we had the largest turnout in 40 years that we'd ever seen in elections, then once you end up with that kind of massive turnout you're still going to strain the process on Election Day. And assuming that we have an even higher turnout in 2008, you're still going to see a strain on Election Day, even in states with early voting. The point is, it's going to be less of a strain than it would have been had all that other 30 to 50 percent shown up.

VICE-CHAIR DAVIDSON:

I guess that's what I was trying to say.

MR. LEWIS:

You know, I mean that's just where we are. Unfortunately for us in elections, our crystal ball is not always really good, you know. I mean we can anticipate that we're going to have more voters show up but where, you know? I mean what locations are they going to be? And why do they only come at two or three times during the day instead of the whole day long, you know? So these are the things -- and when you look at the way that most governments

budget for elections, they don't budget on peak periods. They don't budget so that we can buy enough equipment or have enough personnel or what have you to serve peak period use. What they budget for is is what is the average of how many hours the polls are open and how many folks will show up. And unfortunately that sometimes puts us behind the eight ball in trying to implement then these things, because you don't go down to the local Best Buy and buy more equipment in order to open up more polling sites or open up more lines at the polling site. And so once we sort of enter the election period we're sort of stuck, you know. We're at the mercy now of have we really done all that we could do to plan and think it through? And even then you get surprised.

VICE-CHAIR DAVIDSON:

And on that note, in my going out and talking with states on disaster recovery plans, you know, their budgets were set the year before and I tried to warn them that you may have to go back and ask for more money, a supplemental, because the hype of this election is far greater than any that we've seen in a long time and trying to get them to really think about their disaster planning because of those issues.

But back to your report. The weekend voting, did you look into security of equipment or ballots or anything like that at polling locations? Early voting sites are usually at locations that is controlled by the officials I mean, you know, one way or another where weekend voting if you had all of your precincts you would be in schools, churches, public buildings. Did you look into security of the equipment?

MR. LEWIS:

No because it was not part of the charge...

VICE-CHAIR DAVIDSON:

Okay.

MR. LEWIS:

...of the study to do so.

VICE-CHAIR DAVIDSON:

I was just curious.

MR. LEWIS:

But when you look at it and think it through, I mean clearly we saw -- the beauty of the thing is is that we had the model of the early voting stuff to see now where we have had to solve some of those ballot security issues that we hadn't done before we ever opened up early voting sites. And so you've got to secure ballots. You've got to secure equipment. You've got to make sure that nobody is actually doing anything to either while you're getting ready for the next day's vote totals and what have you. So we had to look at that and we've got experience with that.

What we don't have experience with, that you're correctly pointing out, is we're running a limited number of early voting sites. For instance, in Harris County, Texas, we're going to have in a city -- in a county of about 4 million people there's 35, 36 of those polling sites because there's one for every house member district in the county. And so that's a whole lot fewer than 998 that they open up on precinct day, you know. And so you do have a different set of issues. And if we were to try to do this throughout as weekend

voting or multiple day voting in all precincts, we'd have to go through and figure out how to do some of these things.

VICE-CHAIR DAVIDSON:

There would have to be further study on...

MR. LEWIS:

Absolutely.

VICE-CHAIR DAVIDSON:

...the areas.

MR. LEWIS:

Absolutely.

VICE-CHAIR DAVIDSON:

Okay, thank you.

MR. LEWIS:

Yes.

VICE-CHAIR DAVIDSON:

Appreciate you being here.

CHAIR RODRIGUEZ:

Thank you. And just a couple of observations. I personally was pretty encouraged about the Vote Center concept, and Scott Doyle does have it down to a science in Larimer. Of course, when we did it in Denver it was a huge -- because of the poll books which you need, you have to have an electronic poll books...

MR. LEWIS:

Right.

CHAIR RODRIGUEZ:

...to do a vote center model, we just failed.

MR. LEWIS:

I think a contributing factor there may be, Commissioner, too, is that office has had a lot of turnover in terms of leadership and staff and what have you. And that contributes to not having a long-term training schedule going on and a long-term practice with this. And so as a result of that immense turnover they had probably less stability in terms of being able to work...

CHAIR RODRIGUEZ:

Planning, correct.

MR. LEWIS:

...with this, you know. And clearly I think what happened there is a good lesson to all of us, is that you cannot assume you can jump instantly into one of these deals, you know. You end up having to take usually baby steps until you get your practices and procedures pretty well in place and know what you're doing. And then you begin to expand it on a greater basis. And even Scott Doyle did this if you'll remember, you know, when he first started this. This is true whether we're talking about vote centers or early voting or vote-by-mail...

CHAIR RODRIGUEZ:

...or vote-by-mail.

MR. LEWIS:

...or any of these practices. You've got to kind of move along at a progressive rate rather than we're going to jump into it and do it a big way all in one election.

CHAIR RODRIGUEZ:

Are there some jurisdictions in Texas that are going to do the vote centers? I thought I had heard...

MR. LEWIS:

Yes, ma'am. Yes, we already have some in Texas that are doing it. Certainly, Nevada has got some that are doing it. It's my understanding Indiana has got some that are doing it. I think those were in some of the original concepts. I don't know if they made it in the final edition of the report, but clearly there are some other jurisdictions doing this. And we'll probably see some growth of that concept as we go through. Again, it is one of those where you sort of have to do it, you know, step-by-step methodically rather than jumping into it. And those that jump into it in a big way probably are going to find more often than not that they weren't quite prepared for doing it like they ought to. It does have -- the vote center concept does have some concepts that make it more difficult to do in urban areas than in less urban areas.

CHAIR RODRIGUEZ:

But as with anything in voting, training of the voter is a really important component.

MR. LEWIS:

Oh my lands, you know, and voters are very creative, you know. They can do things we didn't think they could do and they shock us every election. I mean we learn -- you think you fixed all the holes, you think you fixed everything that there's no way that they could possibly do X,Y,Z and sure enough, boy, there it is. And so they're just creative folks, you know, and they're far more creative in being able to do it than we are in trying to figure out how to stop them from doing it, you know, so that they don't make those mistakes. But that's what makes this an interesting business because we're

always trying to improve this so that the next time, we don't always catch it in this election, but the next time at least we're ready for that set of circumstances and we're always then presented with new ones.

CHAIR RODRIGUEZ:

And just a final point. I had the opportunity to go to Puerto Rico for their Sunday primary and the hope was that the turnout would be record, and although it was high apparently it wasn't the record turnout that they were hoping for. But the prison -- opportunity for individuals who are serving sentences to vote was really an amazing thing to witness where the election official went to the prisons and basically opened a polling place, not on Election Day but a couple of days before. It was -- of course I had never seen anything like it so it was quite something.

MR. LEWIS:

Commissioner, you know, I'd like to come back to one thing that Commissioner Davidson said, and this is one of those things that I think all of us in America that are in public policy work are going to have to work on, is you were talking about, Commissioner Davidson, the fact that budgets are set a year or two years in advance for these things. What's really interesting is because of the economy doing what it's doing, and what have you, we have a whole lot of commissioners, county commissioners all over the country that have cut budgets in a Presidential election year, in an election year where you expect far more voters than we've ever had before. And they're going through and, you know, and typical of -- I mean they've got a tough job to do, too. I'm not criticizing

them from the standpoint of they're having to do what they have to do in order to reduce their budgets because there's not enough money coming in. And yet at the same time when you're expecting far more voters than you've ever had before and then being told that you're going to cut your budget ten percent or 12 percent or 18 percent or nine percent, or whatever it is, is very hard to swallow. I mean how do you serve voters in that instance? And so at some point all of us that are in public policy work are going to have to find a way to figure out how we don't cut budgets in Presidential election years. I mean, you know, one of the things I've suggested to some of our folks is that they put up a map, you know, when their county commissioners tell them they want to cut it out and indicate to the county commissioners, "Just tell us which part of these folks you don't want to vote, you know. You pick it so we don't pick it." But that's the reality of what we're faced with. And, quite frankly, I'm going to tell you we've got a whole lot of jurisdictions around America that have less money to run this Presidential election than they had to run a non-Presidential election.

COMMISSIONER HILLMAN:

I don't think this is where Mr. Lewis intended to go with this, but I would suggest that if we are confronting that, I would ask states to take a hard look at where they're applying their HAVA dollars and to the extent that it's appropriate to apply the HAVA dollars so that voters don't get short serviced because of budget cuts at the local level, because we just can't afford to have that happen. People are distrusting enough of the system, and any time there's a glitch it's assumed it's intentional for disenfranchisement purposes. So if

somebody hears a budget was cut and they feel it was disproportionately cut in the Southeast versus the Northwest, it takes a long time to help voters believe it wasn't intentional.

MR. LEWIS:

Agreed, I understand. Particularly when it's anticipated that it's going to be a close election.

COMMISSIONER HILLMAN:

With high turnout.

MR. LEWIS:

Everybody looks at every possible reason for, why we won, or we lost, you know. And if you're on the losing side of that issue, then you're really distrustful that somebody just made this happen on purpose.

CHAIR RODRIGUEZ:

I don't know, Mr. Lewis, if you were here earlier, but we announced that -- we learned that the Social Security Administration is planning to take down their database on October 10th through the 13th, just at a time when election administrators are doing verifications and cross-checks for voter registrations. And EAC is, you know, attempting to get the word to – well, we're doing a letter to Social Security and asking them to reconsider that plan.

MR. LEWIS:

Which is wonderful. The truth of the matter is, look, the Social Security Administration had never anticipated they were going to be involved in election administration, and so they don't plan around that and it's not their primary function and what they're thinking about. And yet as a result of that they're not thinking then how

what they do in terms of this taking the database down at a time that's ill considered for elections is just what it does to it. But, clearly, now that they have a role, an official role, a legal role in this process they certainly do have to consider this. And I applaud what the Commission is doing in saying, "Folks, wake up. It's a new day and it's a new role and a new responsibility."

CHAIR RODRIGUEZ:

These are the challenges, though, that the election administrator is facing with decreasing resources.

All right, then are we ready to vote on adopting the report? Commissioner Hillman?

COMMISSIONER HILLMAN:

I am. I'm just wondering if Mr. Lewis had any recommendations to EAC about what we do with the report to give it the greatest distribution or which segments of our stakeholders would most benefit from the information.

MR. LEWIS:

Well, Commissioners I think clearly from the standpoint of either academic research or policy-making within Congress, Congress asked you to do this. Certainly you need to report it back to them. This to me becomes a milestone report. The first, probably real study of alternative forms of voting were done in 1994 by the then Subcommittee on Elections at the House Administration Committee when they did a full report. They did lots of hearings and they invited in lots of folks and they did a huge study on it and published it then and it's in a very thick tome from Congress itself. This is the first real edition to that since then, and it seems to me from your

standpoint it's useful for folks to be able to have it at least from a policy-making standpoint. The data seems to indicate that some of those very popular ideas may not necessarily hold water yet in terms of this. Now the truth of the matter is, is we may not know all that we need to know. We may not have had a big enough laboratory to experiment with some of these things in order to truly know, but it's good data. It's useful data. And it certainly provides benchmark, in terms of being able to respond to both the proponents and the opponents of each of these ideas. And so, certainly I think every member of Congress and their staff ought to be presented with a copy of the report. And certainly I'm hoping that we can then distribute it to the academic institutions through their school libraries so that they can -- they indeed can have it for social science and political science kinds of studies there.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

Perhaps we'd add State legislatures

MR. LEWIS:

Right, correct. Very good.

CHAIR RODRIGUEZ:

Okay, all those in favor of adopting the study on Alternative Voting Methods indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

The study is adopted. Thank you very much. Thank you, Ms. Lynn-Dyson.

The next agenda item is the announcement -- we have two changes to our October meeting schedule. The first is that we are going to have a special meeting on October 7th, which I think is a Tuesday, I'm not sure, to deal with some business items so that when we have our October 15th meeting, and that's a change also, we can just have the voting workshop, the election workshop. So on October 7th we have a couple of recommendations for the agenda; A consideration of the EAC guidance regarding material changes to state plans, discussion of revisions to advisory opinion process which is being prepared by Mr. Cortes, the consideration of the draft working group policy as proposed by Commissioner Hillman. And that's formerly, not formally.

COMMISSIONER HILLMAN:

Right. Yes, that would be one change for the agenda, formerly.

CHAIR RODRIGUEZ:

Okay, formerly. And then the accreditation of CIBER -- or the consideration -- CIBER has been recommended for accreditation by NAVLAP and so we're going to consider that at the next meeting. We have already posted this agenda per my 21-day policy, but if there are additions to it we can manage those. So let me know if anybody has an addition to the agenda.

At this time I'll ask the Commissioners if they have any closing remarks. Anyone?

COMMISSIONER HILLMAN:

No, I don't. I think we covered an awful lot of issues today and thank the staff for keeping pace with us.

CHAIR RODRIGUEZ:

That's right. And Commissioner Hillman suggested we try to do the whole September meeting in one day, and we are going to.

I have no remarks other than we are -- we await the GAO opinion on the appropriation issue that we discussed earlier in the agenda, and then hopefully we'll have success with the Social Security Administration. That's a big agency to try to influence, but we're going to do our best.

All right, then. At this time I will adjourn the business of the public meeting.

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[The public meeting of the EAC adjourned at 2:03 p.m.]