

Minutes of the Public Meeting

United States Election Assistance Commission

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Held on Wednesday, April 30, 2008

VERBATIM TRANSCRIPT

The following is the verbatim transcript of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on Wednesday, April 30, 2008. The meeting convened at 10:03 a.m., EDT. The meeting was adjourned at 12:42 p.m., EDT.

PUBLIC MEETING

CHAIR RODRIGUEZ:

Welcome to the Wednesday, April 30th, public meeting of the United States Election Assistance Commission. I’m very pleased again to remind everybody that this is our second meeting that is being Web cast, and so keep that in mind.

I’m at this point calling the meeting to order and inviting everyone to join me in the Pledge of Allegiance.

[Whereupon, Chair Rodriguez led all present in the recitation of the Pledge of Allegiance.]

CHAIR RODRIGUEZ:

Madam General Counsel, roll call 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:

Caroline Hunter, Vice-Chair.

VICE-CHAIR HUNTER:

Here.

COUNSEL HODGKINS:

Donetta Davidson, Commissioner.

COMMISSIONER DAVIDSON:

Here.

COUNSEL HODGKINS:

Gracia Hillman, Commissioner.

COMMISSIONER HILLMAN:

Here.

COUNSEL HODGKINS:

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

CHAIR RODRIGUEZ:

Very good. Is there a motion to adopt the agenda?

COMMISSIONER DAVIDSON:

I move that we adopt the agenda for the meeting today, April 30th.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt today's agenda. Is there any discussion on the point? All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Thank you. At this point in the agenda is the moment for welcoming remarks. I'd just like to thank the Commissioners for accommodating a request for a special meeting. This is a special meeting. We have -- Commissioner Hillman last year predicted that this year would be particularly busy because of elections, and she's

been right. There's been a lot of work on our plates, and so we may have to, from time to time call a special meeting, just to keep up.

The first item of business on the morning agenda is Old Business and it's a vote that -- a motion that we tabled at our April 16th meeting in Minneapolis, regarding Maintenance of Effort. And so, I'll call on Vice-Chair Hunter.

VICE-CHAIR HUNTER:

Thank you, Madam Chair. We have...

COMMISSIONER HILLMAN:

Madam Chair, just as a point of order, and I'm not sure about this, but I think that Robert's Rules says that a tabled -- a motion to table is non-debatable, and I'm not sure if we have to take this off the table, so it can be discussed. It's just a point of order.

COUNSEL HODGKINS:

I believe that that's true, but we're checking on that.

COMMISSIONER HILLMAN:

Right. So, it might be -- unless we want to leave it on the table, but it might be safest to take it off the table, so that we're not proceeding inappropriately.

CHAIR RODRIGUEZ:

And Madam General Counsel?

COUNSEL HODGKINS:

We're checking that fact...

CHAIR RODRIGUEZ:

Okay.

COUNSEL HODGKINS:

...but I'm just waiting on -- she's checking.

COMMISSIONER HILLMAN:

Any parliamentarians? I have to reach way back to go to that. So, you know, I guess we could start discussing, but if it is that we should take it off the table, I'd be prepared to do that.

VICE-CHAIR HUNTER:

You'd be prepared to do that?

COMMISSIONER HILLMAN:

So we can discuss it, yes.

VICE-CHAIR HUNTER:

Okay.

COMMISSIONER HILLMAN:

Uh-huh.

CHAIR RODRIGUEZ:

Well, we have out-of-town guests. Mr. Cortes is queued up and ready. Do we need, Madam General Counsel, a motion to amend the agenda while we wait for this? Or can we proceed with Mr. Cortes and come back?

COUNSEL HODGKINS:

No, I think the agenda is fine.

CHAIR RODRIGUEZ:

Okay.

COUNSEL HODGKINS:

I think the point that Commissioner Hillman is making, is that we just need a motion to bring this issue to the table. It has previously been tabled, so then you could begin discussing the motion.

CHAIR RODRIGUEZ:

Oh, okay.

COMMISSIONER HILLMAN:

Yes.

CHAIR RODRIGUEZ:

I thought you were getting something clarified. Okay.

COUNSEL HODGKINS:

No, no, no. Well, we are, that in fact that she's correct, that you can't discuss a motion that has been tabled so, therefore,...

COMMISSIONER HILLMAN:

We need to take it off the table. So moved.

CHAIR RODRIGUEZ:

Is there a second?

VICE-CHAIR HUNTER:

Second.

CHAIR RODRIGUEZ:

Okay. Any discussion on the motion to remove the motion from its tabled status? Seeing none, I'll call for a vote. All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay, Vice-Chair Hunter?

VICE-CHAIR HUNTER:

Thank you, Madam Chair. We have discussed this proposal and we discussed it at length at the last public meeting and agreed to table it, as was just discussed, so we would have the opportunity to hear more comments from the public on this issue. And since that last meeting we have received several other comments. In total

we've received, at my best count, 12 comments in favor of the proposal from election officials from all over the country, on both sides of the aisle. And we did receive, last night, a new comment signed by, I believe, ten different organizations and they are opposing the proposal. So, there is wide interest, I would say, in this issue and I'm glad that we're having this conversation.

Specifically, it's with regard to whether or not the Maintenance of Effort requirement in 254(a)(7) of the Help America Vote Act requires the counties to participate in that Maintenance of Effort requirement. And, as is spelled out in a memo that we posted on our Web site last night, written by me, dated yesterday in response to Office of General Counsel's office memo dated February -- April 14th, both of which are posted on our Web site, the specific language of the section is, how the State, in using the requirements payments, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. So, the word "State" is in that very section three different times. There's no reference in that section to "units of local government." And, in fact, within the same section of HAVA 254, in both sections (2) and (8) "units of local government" is specifically mentioned.

So, in my view, if Congress wanted to include the local governments in this requirement to maintain the effort, they knew how to do so, and in my view, they would have done so. I do not see any evidence that they intended to do so, both in the plain language of the statute and in any other portion of the Help

America Vote Act. And in fact, as is stated in the memo posted last night on the Web page, there's a section of HAVA, Section 901, which defines several terms, one of which is "State." And it says, "In this Act," so, in the entire Help America Vote Act, "the term State includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa and the United States Virgin Islands." So, there's no mention in this section that State meant anything other than State.

The references I mentioned from the 12 election officials, from both sides of the aisle, all across the country, have said that they never interpreted the Act to mean anything other than State. And one of the arguments that the Office of General Counsel, as well as the letter that was sent in last night from the variety of groups, says that many States, and specifically, the Office of General Counsel's office, says 23 States, include it in their State plan that they would require their counties to maintain the effort.

But if you look closely at that compilation, what happened Was, somebody here at the EAC went into the State plans that were filed, back in 2004 I believe, they were published in the Federal Register on March 1, 2004, and gave an excerpt from what each State said in that section of the State plan, and those excerpts are attached to my memo as Attachment "A." And a careful read of those will, I believe, make most people conclude that the number 23 is grossly inflated, because the number 23 includes even if a State just mentioned the word "county" in their State plan. But there's, really, no evidence that most of the States, even most of the 23, read HAVA to mean that HAVA required counties to

maintain the effort. Now, there are a few States that do say that in their State plan and one of them is Mississippi. So, I think it is fair to say there are a few. Maybe -- generously, maybe 12 have said in their State plan that they will require the counties to maintain the effort.

But just to give you an example, one of the States included in the 23, is the State of Colorado. However, the State of Colorado specifically said in their State plan that they're requiring the counties to maintain the effort pursuant to State law, not pursuant to their reading of the Federal law. And in fact, the Secretary of State of Colorado submitted a comment that he -- he's writing that the EAC urge -- he's writing to urge the EAC to adopt my proposal that we change our Advisory to delete any reference that requires county and/or local governments to comply with Maintenance of Effort requirements, as stated in 254(a)(7). So, again, a State that was included in this supposed group that required counties to maintain the effort, has now said "A" we didn't read the Federal law that way; and, "B" we specifically urge you not to read the Federal law that way.

One other point, is that, at the outset the EAC did not provide guidance on this issue, and I understand the EAC wasn't here when the money was originally given out, but there was no guidance from the EAC on the Maintenance of Effort issue until -- there are two Advisories, one in May of last year and another in September of last year. And I think, my view is that the May one wasn't clear, that the EAC was requiring the counties to maintain effort, but that's beside the point. Until 2007, the EAC had said

nothing on this matter. So, it's reasonable to assume that the States, you know, were free to read the law the way they see fit. And I think, at this late juncture, without any evidence that Congress intended the word "State" to mean anything other than State, it's late and it's unfair and inappropriate for the EAC to read that section as requiring Maintenance of Effort on the part of the local units of government.

Thank you very much.

CHAIR RODRIGUEZ:

Thank you, Vice-Chair Hunter. Are there any questions or statements that anyone wants to make? I have asked, earlier, Commissioner Hunter to -- if we could have more time to consider this because the very late -- until -- well, it was 1:30 this morning when I read the email from Mr. Wilkey, but at 10 o'clock last night we got objections. Just this morning, we have a letter from Congressman Gonzales, saying don't decide this issue in haste. He's not objecting, but he's saying, give yourself a little bit more time. And possibly, we may want to consider a public hearing on this issue from both sides.

Commissioner Hillman, in her statement, opposing this policy, said that she had heard from election officials who supported that, and I'd like to hear from them, too. And to date, they hadn't submitted any written comments, but perhaps we can invite them to a public hearing. Our next regularly scheduled meeting is May 22nd and I had planned a voting registration workshop at that meeting, but we may want to devote part of that to

a public hearing. And I'd like input from the Commissioners on that proposal.

I appreciate Commissioner Hunter, she's put this on the table a number of times now and I appreciate her being willing to place it back in suspense until May 22. I want to hear from the rest of the Commission. Commissioner Hillman?

COMMISSIONER HILLMAN:

Madam Chair, let me just correct something. The statement I issued didn't say that I had heard from election officials who were -- I'm not sure exactly how you phrased it, who were in support of. What I heard was that election officials readily acknowledge, that within their States, and I'm talking about chief State election officials, readily acknowledge that within their States, that local units of government are a huge part of the Maintenance of Effort, either because the local units of government have received a substantial portion of the HAVA funds or because they bear the cost of administering Federal elections.

And so, I appreciate that we are giving ourselves more time to explore the issue, but I have to say that I continue to oppose the proposed policy. And while I could spend several minutes going point by point, my concern is the bigger picture. The bigger picture being that, one, I understand that States don't like to be regulated by the Federal Government. I get that. I understand that they don't like the so-called unduly burdensome responsibility of documenting. And it is my assessment, based on conversations and things I've read, that what some States are reacting to is what they felt was a burdensome responsibility to document Maintenance of Effort by

local of units of government, particularly in response to the audit process that was engaged by our Inspector General. Yet EAC, though we don't regulate, and I'll be very clear on the record, we have significant responsibility as a Federal agency, to Congress and to the voters, to be able to document that States are in compliance with all aspects of HAVA. And I don't believe for one minute that Congress intended only the State expenditure, is what is considered Maintenance of Effort, when we know that in some States 70 percent or more of the HAVA dollars went to States, or in other cases the local units of government paid the cost for administering the Federal election and before HAVA they paid that cost without dollar support from the State. So, I think EAC needs to also look at it as, what increased service to voters will be provided with the Maintenance of Effort requirement and that really does, in my opinion, include Maintenance of Effort by local units of government.

So, I would encourage us to accept our responsibility, as uncomfortable as it may be sometimes, for assuring that States in fact are meeting the Maintenance of Effort requirement. I agree with you that it would be very useful to have a really good hearing with perspectives, not just from election officials, about Maintenance of Effort, what the implication is. We could fill this room with representatives from Federal agencies telling stories about how States have pushed back, but still telling stories about their responsibility as a Federal agency to Congress and to the taxpayers. And so, it's in that context that I encourage us to look at this as how can we work with the States to arrive at a

documentation process that they would not see as unduly burdensome and that allows EAC to meet its responsibility.

Now, I understand that some State officials have written in support of Commissioner Hunter's proposal, but I also recognize, however we want to parse it, that at least 23 States acknowledged their local units of government are a part of the MOE. And so, when HAVA refers to the "State," I really do believe it's referring to the Maintenance of Efforts within that State, not just the State, because if the State wasn't paying the cost of Federal election, then there would be no Maintenance of Effort. And so that's where I am today.

CHAIR RODRIGUEZ:

Thank you, Commissioner Hillman. Commissioner Davidson?

COMMISSIONER DAVIDSON:

You know, I think that the issue that lies before us many States have dealt with it in different ways obviously. And in Colorado, because I was sitting there at the time we actually went through the State plan, we felt that it was very important to have a county Maintenance of Effort. But we put that in the law, knowing that I had no authority to mandate that the counties, you know, report that and actually, that I could force them to meet that Maintenance of Effort. So we put it in their law, so that their own auditors would be the ones that would be checking that and that I wasn't responsible. I think, where really, the question lies is, how many of the States have that in their State baseline, their county MOEs, if you would call it that, and the State MOE? And the total -- because that's what we're talking about here. The States are going to be

responsible for that total amount throughout the State, and that's what we need to look at, is, where does that fit in with the counties and how do we look at that. So, I think that that's an area -- we've been talking about 23, but not all of them have that as part of their baseline figure, the county and the State. So, I think that, as we say, going back to 2000 is the election time that they're actually getting this baseline and moving forward, this is 2007, and a lot of time has gone in between, but that baseline is very important and how many of them know that, really, we have no authority over counties. So, if it stays as it is, the State is going to be responsible for all of the MOEs throughout the State, the county or the locals, in a lot of cases it's municipalities, and the State themselves. So,, they're going to be responsible for all of it, if their entities is not paying their fair share of it. So, that's a concern to me, also, is our information we have, I don't think, drills down deep enough to know how many of the States are dealing with it the way that we're talking about it.

CHAIR RODRIGUEZ:

Vice-Chair Hunter.

VICE-CHAIR HUNTER:

I agree with the comments of my colleague, Commissioner Donetta Davidson. And I was trying to make that same point, you made it much more clearly, that the 23 States, that number in the Office of General Counsel's office, is really not instructive, in my view.

And I'd also like to respond. One quick question is, Commissioner Hillman, I have not seen a statement. Is there a

statement that I missed that you put out? No? Okay, I'm sorry,
someone...

COMMISSIONER HILLMAN:

I don't know...

CHAIR RODRIGUEZ:

It was an email.

VICE-CHAIR HUNTER:

Someone referred to a statement.

COMMISSIONER HILLMAN:

I shared my perspective on this in an email to you all.

VICE-CHAIR HUNTER:

Okay. Okay, I apologize. I thought, maybe there was something I missed. And I just saw the letter from Congressman Charlie Gonzales and I want to address that in a minute.

But, one of the things that Commissioner Hillman said is, that States don't like to be regulated by the Federal Government, and that is, certainly in most cases, true. The reason for my proposal has nothing to do with whether or not States like to be regulated by the Federal Government. I mean, we wouldn't be here, the EAC wouldn't be here if that was, you know, the reason for all action and certainly we would just decide to not enforce other sections of the Help America Vote Act. That has nothing to do with the issue for me. The issue is that, the plain language of Section 254(a)(7) says "State." And I understand that many States don't run elections. They have sort of a minimal approach to it and in many States, the counties actually run the election, do most of the expenditures. I fully understand that. But in my view, if Congress

wanted the counties to maintain an effort back from the fiscal year 2000, again, they would have so stated. And of course, Congress can always change the law. To the extent that there's some confusion and we're misinterpreting something, they should do so. But again, it has nothing to do with whether or not a State is burdened by something. And to the extent that Congress doesn't speak to this clearly, in my view we'd be reaching -- we've be over-reaching our authority to require counties to do that. And in addition to that, it would be burdensome to counties because, in my view, it seems to me a better use of their time is educating voters, preparing for Election Day, you know, doing all the things that are better use of their time to administer elections, rather than comply with something, in my view, that the EAC doesn't even have the authority to do.

COMMISSIONER HILLMAN:

Madam Chair, I look forward to our being able to explore this more fully in May, but I do want to make a point that, I know in the case of one of the States, who in fact, sent in the letter supporting the proposal, in reality, 70 percent of the funds -- HAVA funds went to the counties and that State requires the counties to report, I think, twice a month on their Maintenance of Effort. So I think, that there are States who get it. They understand that they need to know. Now, I don't think I ever said that EAC should impose the requirement on the counties. The requirement is on the States to be absolutely transparent in where the Maintenance of Effort comes from and to accept the responsibility to document that. How we accept documentation of that, I think, is something that we can talk

about. But I don't think States can be left off the hook, to not be fully transparent on that issue. And it's not at all that I don't think that the States do that, but I think EAC has a responsibility in reporting and responding to questions from Congress, to be able to document how that is happening.

CHAIR RODRIGUEZ:

Any further discussion? Madam General Counsel can you tell us how to put this back on the table, continue it?

COUNSEL HODGKINS:

You just need to have a motion to table the issue and a second, obviously.

CHAIR RODRIGUEZ:

Do we want to lock ourselves into May 22nd? Or do we want to consider an alternative? Vice-Chair Hunter.

VICE-CHAIR HUNTER:

You know, I haven't fully thought this through, but I suppose if we table it until the EAC has another vote on it, just in case for some reason we can't vote on it May 22nd and in case we decide we want to vote on it in advance of May 22nd, which I'm not advocating but I'm just saying it's possible, I think that might be a better plan.

CHAIR RODRIGUEZ:

Okay. So the motion is?

VICE-CHAIR HUNTER:

To table the proposal to amend Advisory 07-003-A, until such time that the EAC Commission is able to vote on the proposal again.

Something along those lines.

CHAIR RODRIGUEZ:

Is there a second?

COMMISSIONER DAVIDSON:

I will second the motion.

CHAIR RODRIGUEZ:

Okay, it's been moved by Vice-Chair Hunter to table her Maintenance of Effort proposal. Is there any discussion on the motion?

COMMISSIONER HILLMAN:

It's non-debatable.

CHAIR RODRIGUEZ:

That's right. All those in favor indicate by saying aye. Are there any opposed?

COMMISSIONER HILLMAN:

Opposed.

CHAIR RODRIGUEZ:

Okay.

VICE-CHAIR HUNTER:

Opposed. I'd also like to make another motion, similar to the one that we approved in Minneapolis, which is, to refrain from enforcing the Maintenance of Effort Advisory, EAC Advisory 07-003-A, to the extent that it requires a State to include local and/or county government expenditures when determining the MOE baseline requirement, outlined in HAVA Section 254(a)(7), until such time that the Commission is able to vote on the amended policy regarding the MOE requirements of HAVA. Julie, I'll give you this. It's essentially the same as the motion that we approved at the meeting in Minneapolis.

COMMISSIONER DAVIDSON:

I'll second the motion.

CHAIR RODRIGUEZ:

I have a question. Is that -- doesn't that just continue, Madam General Counsel, from Minneapolis?

COUNSEL HODGKINS:

My understanding of the original motion was, that it would suspend until you voted on a new policy, so I don't think that anything has changed in that respect.

VICE-CHAIR HUNTER:

Okay, that's true.

CHAIR RODRIGUEZ:

So...

VICE-CHAIR HUNTER:

Thank you for that point of clarification. So that continues, okay.
Thank you.

CHAIR RODRIGUEZ:

You withdraw the motion?

VICE-CHAIR HUNTER:

I'll withdraw the motion.

CHAIR RODRIGUEZ:

Thank you. Okay then, we will work on the May agenda and see if we can have a public hearing on this issue in May.

We now move to New Business and a briefing regarding States plans from Mr. Cortes, who is our Acting Division Director of HAVA Payments and Grants and Election Administration Improvement Programs.

Thank you Mr. Cortes.

MR. CORTES:

Thank you Madam Chair. My first presentation this morning deals with State plans. There have been many issues that have come up. Let me backtrack a little bit here.

The Congress appropriated an additional \$115 million in Requirements Payments for fiscal year 2008. That was passed in late December. In early January we sent a letter out to all the chief State election officials indicating to them what the process in HAVA was for receiving payments. Since that time, we have received many questions regarding the State plan and which State plans needed to be amended, what the process was for amending them. And so, I think, today is a beginning of a discussion that the Commissioners indicated they wish to have, in terms of the EAC's role in reviewing State plans and putting out some guidance for States, so that there's more clarity in the entire process of the HAVA State plans.

So, the first part of that is, that the EAC's role in regard to receiving the State plans remains undefined. HAVA requires that the State plans be submitted to EAC for publication in the Federal Register and the State plans must be published in the Federal Register for 30 days before the State plans can take effect. One of the questions that the Commissioners need to consider, and I think that the States have been asking, that needs to be answered, is, what is the extent to which EAC should review State plans prior to submission to the Federal Register? In other words, once we get a

State plan in the door, what level of scrutiny should we give to that plan before sending it over to the Federal Register for publication?

One of the things -- a couple of things to think about in that regard is, whether or not the State plans have included all the portions required under Section 254 of HAVA.

Another one is, the issue of expenditures, and this has come up through some of our audit process, where expenditures were indicated in their State plans and have, through the audit process, been deemed unallowable expenditure of HAVA funds. In reviewing the State plans, do we have an obligation, or should the EAC, proactively, identify spending in the State plan, that may not be eligible for HAVA funding and inform the State that that may be the case, before it's published to give the State an opportunity, you know, if they need to, to consider whether or not to include that in their State plan.

The other very large policy issue here, has to deal with -- or deals with Section 254(a)(11), which requires that an amended State plan be filed when there is "a material change in the administration of the plan." We have gotten a lot of questions, particularly in the past couple of months, about what exactly is a material change in the administration of the State plan. We are currently -- at the request of several Commissioners, the staff is currently preparing a proposed guidance for the Commissioners to consider, which would define what EAC considers to be a material change in the State plan and, therefore, it would give States guidance, not only for the current appropriation of Requirements Payments, but in the future, as States continue to implement

HAVA, whenever they make changes or whenever new appropriations come around, there will be some clear guidance out there from EAC, as to what constitutes a material change and it will remove the ambiguity for States, as to whether or not what they're doing requires them to amend their State plan.

The next thing that will -- or the next step that will be part of this process, once some of these policy decisions are determined, will be internal EAC procedures for processing the plans. Obviously, this will be dictated by, you know, the amount of resources and the time that it takes for EAC to process plans, will be dependent on the level of scrutiny that the Commissioners decide to give to the State plans.

One of the other issues that we're going to come across, is that the Federal Register this year, is changing the way that they accept submissions from agencies for publication. So, it's going to require us to notify the States of some different changes in how they submit. The submissions will have to be electronic to the Federal Register, and there will be some technical guidelines coming from the Federal Register in that regard. So, we will have to notify the States of that.

We will also set up and indicate to States, what the expected timeline for the review will be, based on those policy considerations, as well as, we're looking at ways to try to reduce the costs of publication in the Federal Register. I don't know if you're aware, but printing in the Federal Register is quite pricey. It's about \$525 for each page of the Federal Register publication

and, as you know, some of the State plans can be rather lengthy. So we're looking at what our options might be in that regard.

In the meantime, what the staff is proposing, is that we will continue processing plans as we have in the past. The way that it's worked in the past, is that we have had a subcommittee of two Commissioners that have reviewed the State plans, with the assistance of staff, just to give it a cursory glance and make sure that all the 13 required things that are listed in HAVA, are actually contained in the plan. There hasn't been a higher level of scrutiny than that, so, for the time being we recommend that we continue that process with the subcommittee and then sending it to the Federal Register for publication. But as we're going through this process, you know, inform States that as we get through it, there may be a change in the timeline and in how their submissions work and in the level of review that we provide to State plans.

And so, that's kind of the first step. And we will hopefully, in the next week or so have a proposal out to the Commissioners, an initial draft of the definition of a material change in the administration of a State plan, so that you all may begin considering it and then determine from there how you wish to proceed with the matter.

CHAIR RODRIGUEZ:

Thank you. Are there any questions for Mr. Cortes or comments?

COMMISSIONER HILLMAN:

Well I do have a question about timeline, because I would hope that we would come to some agreement on what the process will be, before the bulk of the State plans have come in and out of the door.

And I agree with Mr. Cortes' summary, of how the EAC have handled the review of the State plans in the past, but to also add that, when we saw that a State plan contained something that was not in compliance or was in, I guess, violation of HAVA, is the correct word, that that was also discussed with the State to explain that was not a permissible activity. And maybe that's the better way, rather than saying, in violation, saying if a State plan contained something that was not a permissible activity, we did flag that, to let the State know that as well.

MR. CORTES:

And just to follow-up on your point Commissioner, we have to date received only one State plan that deals with the new appropriations or Requirements Payments. But we have been informed -- several States have informed us that they're now beginning down the road of amending their State plans or looking at what they have to do in order to access their appropriation of FY-08 Requirements Payments.

COMMISSIONER HILLMAN:

I mean, if nothing else, what the dollar would have bought in 2003, is not what the dollar will buy for States today. So, I would think that there would be a "material budget change" in their plans to be able to just fulfill their current duties with today's dollar. I don't know whether we're on 75 cents on the dollar or where we are, but I know that if nothing else, with the cost of paper and printing and labor and transportation charges, that alone could spike a budget. And I know the cost of voting systems have gone up considerably since 2004.

MR. CORTES:

One of the places that we're looking at, for guidance, in terms of defining material change, is to the common rule, which is OMB Circular A-102 and there are provisions in their -- Federal funding that goes to the States usually requires State plan. And so, there's some definition in there, some general descriptions of preparing a State plan and also amending a State plan and when the State plans needs to be amended. Obviously, we have a situation where the legislation actually gives a lot more specific guidance as to what needs to be contained in the plan, but there is some general guidance we can take from that and apply to defining what a material change in the plan is.

CHAIR RODRIGUEZ:

I just want to make a point that we have some meetings coming up of our -- some of our constituents at NASS, National Association of Secretaries of State, and National Association of State Election Directors. Do you anticipate having some information to make available to those groups?

MR. CORTES:

Yes. Like I said, I think in the next one to two weeks we'll have, at least, a draft proposal of, you know, what -- the definition for a material change to a State plan. I think that will be a big piece of this puzzle and answer a lot of questions for the States that they've indicated that they had. They even -- you know, we had a presentation during our March public meeting, as well, where some of these issues were brought up. But in addition to that I would imagine that because it's such a large issue the Commissioners

may want to consider doing a public comment period, you know, a minimum 30-day public comment period to take in comments from States and from other interested parties on this matter. Because this is the first time the EAC is providing guidance in the area, it would be good to have a mechanism for people to provide that input and to give everybody an equal opportunity to do that.

CHAIR RODRIGUEZ:

Very good. Vice-Chair Hunter and then Commissioner Davidson.

VICE-CHAIR HUNTER:

Mr. Cortes, thank you for your testimony. Just one point of clarification. The relevant section, I think you mentioned is Section 254(a)(11) in which it states how the State will conduct ongoing management of the plan, except that the State may not make any "material change" in the administration of the plan unless the change "A," "B," "C."

MR. CORTES:

Right.

VICE-CHAIR HUNTER:

So it's not just a material change. It's a material change in the administration of the plan. And I think what you're saying is, that the EAC -- if a State were to call up right now and say, "What is the EAC -- how does the EAC interpret material change in the administration of the plan," we would not have an answer for them?

MR. CORTES:

Correct. What we've done in the past is refer them to common rule and said there's some general guidance out there, but we have not issued -- the EAC has not issued definitive guidance on this, so it's

up to the State to determine if you consider it a material change or not.

VICE-CHAIR HUNTER:

Material change in the administration.

MR. CORTES:

In the administration of the plan, yes.

VICE-CHAIR HUNTER:

Okay. Because I do think that changes it, right, I mean, in the administration of the plan as opposed to just a material change in the plan?

MR. CORTES:

Yes, I'm just using material change. But, yes, in my presentation here, it says a material change in the administration of the plan.

VICE-CHAIR HUNTER:

Okay, thank you.

CHAIR RODRIGUEZ:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

When I started working with Mr. Cortes on this issue, we discussed several different elements, and obviously, it's important to have input from the Commissioners. And then I suggested that we do put it out for comment on our virtual Web site, so that we can get comments from our Committee, and as we know the public can also give comments and they can see their comments. So, I think that it is one that we definitely need to all be able to work on and to get the ideas, because if we have a comprehensive, you know, do the big picture of everything that needs to be within a State plan, it

will be very helpful to the States in moving forward. Some of the States currently, because they did their budget for the full amount of HAVA instead of what they received up front, feel like they don't have to do another State plan. But obviously, we have to know that they still feel like they're in compliance, so we need a certification, at least, from the office, of saying that. But, you know, whatever we end up, that all needs to be vetted as well as having input from the Commissioners.

And I appreciate Edgardo your work, and thank you.

MR. CORTES:

No problem.

CHAIR RODRIGUEZ:

Any further comments or discussion, Madam General Counsel or Mr. Executive Director? Thank you very much Mr. Cortes. And I believe you're still with us for the next item.

MR. CORTES:

Yes.

CHAIR RODRIGUEZ:

I apologize. I have sinus problems, so I sound funny.

Okay, the Request to Amend State Instructions on the NVRA Form from the State of Michigan. Mr. Cortes.

MR. CORTES

Okay, thank you Commissioners. Michigan has requested a change in their State-specific instructions on the Federal form. To recap, what Michigan wants to do is, remove the mailing address that's currently on there, which goes to the Chief State Election Director and instead have a listing of Michigan's -- the address is

for Michigan's 83 counties and 26 most populous cities, which is a total of 109 addresses that will be listed under Michigan on the Federal form.

My recommendation to the Commissioners is that, at this time, my division can't recommend approving this request for a change. However, I do think that the Commission should table this matter until the next meeting and allow us to discuss a possible accommodation to the State's request and then at the next public meeting, to then be ready to give a recommendation, after we've had a chance to discuss it with the State. If you would like, I can go into some of the analysis behind why we feel that the -- this change would not be a good one for the Federal form.

CHAIR RODRIGUEZ:

I'll defer to the Commissioners.

MR. CORTES:

It's provided in a memo. I distributed a memo yesterday that has a lengthy analysis, but I can touch on some of the points, if you would like.

CHAIR RODRIGUEZ:

Why don't you highlight the key points...

MR. CORTES:

Okay.

CHAIR RODRIGUEZ:

...for the record.

MR. CORTES:

I think the first one -- or the biggest one is that, listing 109 addresses for the State will make the form much less user friendly

and less accessible. The Federal form was created to facilitate the registration process and having this on there will increase the length of the form, which will increase printing costs. It will also create issues in that many voters do not -- are not sure of which local jurisdiction they would fall in. And there's no guidance on there as to who to send it, so it creates a lot more points of failure whereas, you have a singular State office you could send it and the State would then route it to the appropriate local official, if need be. This would also create significant administrative burdens for EAC. Currently, we have less than 50 addresses listed on the form and this would increase that significantly. But what it would also do, is indicate to other States that this is an acceptable thing, and with over 6,000 election jurisdictions in the country, you can imagine how allowing this sort of change could very quickly make the form unwieldy, make the process of updating addresses cumbersome, there will be a lot of lag time in determining when addresses are changed and it would make it harder for voters, voter registration groups and election officials to know which version of the form is the current one. And then, finally, this would also increase administrative burden for chief State election officials. As you know, chief State election officials are responsible for making the Federal form available in their States. By increasing the length of the form, this is going to increase the cost of printing these forms and of making it available to each State, not just in Michigan's case, but this is something that needs to be made available in every State and so it would increase costs and time needed there.

One of -- the accommodation that we wish to discuss with Michigan, and we can use the Nevada State instructions as an example, and basically what we have is, under their State mailing address, there is a small line that says, "Local county addresses. You may also return completed applications to the county" -- I'm sorry this is what we would propose for Michigan is the line says, "You may also return completed applications to the city -- to the county, city or township clerk where you normally reside. And a complete list is available on the Web site." And then we would have the Web site address for Michigan. This would, we think, accomplish Michigan's goal of giving people the option to route their registration forms more directly, while avoiding some of the pitfalls that I described. So that's the accommodation that we would like to discuss with Michigan and then be ready for the next meeting to give a final recommendation on the matter.

CHAIR RODRIGUEZ:

Very good, thank you. Are there any questions or comments for Mr. Cortes?

Very good. Then we'll wait to hear a report either at the next meeting or at such time as you're ready to make a report.

MR. CORTES:

Okay, so I will contact...

CHAIR RODRIGUEZ:

I don't think we need to make a motion and then table it. I think...

VICE-CHAIR HUNTER:

That's right.

CHAIR RODRIGUEZ:

Is that okay? All right, thank you. Okay, we have to let the cameras reload film and this is, I don't know, I'll look to them to tell me, is this a good time to break or could we keep going?

UNIDENTIFIED SPEAKER:

We have an hour.

CHAIR RODRIGUEZ:

We have one more hour of film? Okay, very good.

COMMISSIONER HILLMAN:

Madam Chair, if you could just tell me again, what we just – did we agree to do something about this?

CHAIR RODRIGUEZ:

Mr. Cortes is going to speak with Michigan and then report back to the Commission.

COMMISSIONER HILLMAN:

The only thing I will do then is, just express my sentiment that I agree with the recommendation that I think what you've proposed as a possible fix for what Michigan wants to achieve, is a good one, and I sure hope you have fruitful discussions with Michigan to try to reach a solution.

CHAIR RODRIGUEZ:

Thank you. Okay, next on the agenda is an Appeal from the State of Iowa on Audit Findings. And this is the first time -- this is the inaugural, I think, consideration of an appeal in a public meeting. And so, we're -- this is new to us, as it is to you.

Our first speakers are, again, Mr. Cortes representing the HAVA Payments and Grants Section of his title and Pam Bormann. Ms. Bormann is a manager in the Financial Audit Division for Iowa's

Office of Auditor of State. Ms. Bormann is a graduate of the University of Northern Iowa and has served the office for 20 years. Her primary responsibilities include managing city, county, community, school district, community college, university and State agency audits, including Statewide CAFR and single audit. She is actively involved in the Auditor's Office quality review program of CPA firm reports and work papers, as well as re-audits of local governments. In addition, Ms. Bormann provides technical assistance to local governments and their auditors. She is a certified governmental financial manager and a member of the Association of Government Accountants. Thank you very much for coming in today.

MS. BORMANN:

Thank you.

CHAIR RODRIGUEZ:

And Mr. Cortes will you tell us how this is going to go?

MR. CORTES:

Yes. What I recommend to the Commissioners, and I think the agenda that was published is set up that way, is to follow this kind of in a chronological order. And so, we'll have the Iowa State Auditors go first, since they were the ones that conducted the audit. Then I will be talking about how the EAC management decision was reached and then we'll have the representatives from the Secretary of State's Office come and discuss their basis for appeal.

CHAIR RODRIGUEZ:

Very good, thank you. Please proceed.

MS. BORMANN:

For the year ended June 30, 2006, the Office of Secretary of State spent approximately \$20 million on their HAVA program. This was audited as a major program for the State of Iowa. We found on a Web site of Iowa State University, that the Secretary of State was going to lead a Iowa celebration of voting heritage and rights. The function was an initiative to celebrate the 40th anniversary of voting rights, the 85th anniversary of the 19th Amendment for women's rights and also current implementation of the HAVA program.

As defined in the program regulations, HAVA funds are allowed to be used for voter education. Activities and allowable expenditures must provide information on voting procedures, rights and technology, but it may not be used to Get Out the Vote or to encourage voting. Based on a review of invoices and various items that we had found on the Internet, Celebrate Voting appeared to include elements of both of those and some activities, we did decide appeared to be not related to education.

We initially contacted the Office of Inspector General of the U.S. EAC hotline and were advised that these funds could potentially be allowable. It would depend on what was said, what was done, what the celebration was for and what the message was about.

So then, I did contact Mr. Cortes and basically gave him kind of a rundown on what we had found and what we were looking at and he noted that, yes, they could be for educational purposes. Some activities in some States have been allowed, some in other States have not been allowed. And it was more on a case-by-case basis.

We looked again more on the Internet, looking for various Web sites related to the “Celebrate Voting,” we reviewed these and looked at the activities that they were having. What we found, it describes celebrating voting heritage, voting rights. The kickoff day was to celebrate the 40th anniversary of the Voting Rights Act, included entertainment and local celebrities, which we did not feel appeared to be educational. There was a gala planned to honor lowans who made contributions to the struggle for voting rights. Again, we did not think that this appeared to be educational. Another day was related to the history and evolution of voting rights. This included family activities and many of these activities were specifically were for children. And we did find, frequently asked questions on the Web site, that states that those items are not allowable because the children are not eligible to vote.

CHAIR RODRIGUEZ:

If anybody has a BlackBerry, you might consider turning it off, so there’s no interference. Thank you. I think we’re good.

MS. BORMANN:

Okay. Another description ad that we found stated that Celebrate Voting is a series of events across Iowa to honor the legacy of voting rights and to educate and engage lowans about their right to vote. Therefore, it would indicate that some activities would be educational and allowable, but not all.

We did find that many of the expenditures related to this function were paid through a contract that the State had with the State Public Policy Group, that we had looked at. Invoices to the SPPG were reviewed and we found that the Office of Secretary of

State paid for performers and speakers which we did not feel was related to education and also expenditures related to the children. So a majority of these expenditures, we did consider unallowable.

So based on, looking at the Web sites, the frequently asked questions, discussions with Mr. Cortes, we questioned a majority of these expenditures that were paid to the SPPG, related to what we could find to Celebrate Voting Iowa events. We did find the amount was speakers of \$28,050, performers \$25,383, supplies related to that of \$2,182, children's activities of \$2,095 and then travel costs related to the various speakers and performers of \$3,528. So we questioned \$61,238 in our audit.

CHAIR RODRIGUEZ:

Thank you very much. Why don't we take questions after Mr. Cortes makes his presentation.

MR. CORTES:

Good morning again. The purpose of my testimony today, is to explain the basis for the EAC's management decision, regarding the finding in the single audit, which was just discussed, and also to present other information related to the matter. Now, as was discussed, the finding in the single audit pertained to the Secretary of State's use of HAVA funds for the celebration of voting heritage and voting rights in Iowa.

I'm going through my written testimony here. And just to give those in the audience a little bit of background here, single audit reports are audits that cover the States' or other recipients' use of Federal funds. The audits are required by Federal law for each year that a recipient spends in excess of \$500,000 of Federal

funds. The purpose of the single audit is to report on the recipient's internal controls over the use of Federal funds and compliance with Federal laws and regulations.

The single audit contained the finding of non-compliance with HAVA, which is the one that's up for debate now. There were actually several findings in the audit, others which were resolved but were not appealed.

Basically the EAC agreed with the single audit finding that speakers, performers, children's activities and the related expenditures did not meet the requirement for education. We believe these to be entertainment costs and in that regard they are covered by the OMB Circular A-87 which is Cost Principles for State, Local and Indian tribal Governments and that states that the Costs of entertainment are unallowable. And as was stated, the children's activities are unallowable because the costs are not related to voters.

In addition to the \$61,238 questioned in the single audit report, which are to the contractor SPPG, the Office of the Secretary of State incurred additional costs related to Celebrate Voting that need to be researched.

We reviewed the support for the financial status reports submitted by Iowa of Secretary of State's Office for 2005 and 2006 and identified costs of \$250,391 that are described as "Celebrate Voting" and "Voting Rights Act 40th Anniversary." Of that, Section 251 funds comprise \$106,665. Without a certification required under Section 251(b)(2), we think that these costs might also be questionable, in terms of their use for voter education or voter

outreach. Also, at the request of EAC, the Secretary of State's Office submitted the list of contracts that were financed with HAVA funds. The list of contracts identified the following costs that were not included in the \$61,238 questioned by the State Auditor. Some of these costs, however, may be part of the 250,000 plus that was identified in their State reports. And there's a listing here in my written testimony of the individual amounts, but they total about -- a little bit over \$45,000.

Once the Commissioners determine which costs are eligible for financing with HAVA Section 101 or 251 funds, I recommend that the EAC's Office of Inspector General perform an audit of all of these costs. The purpose would be to, essentially figure out which of these costs are allowable and which are not.

And in regard to our resolution of this single audit finding, it is consistent with EAC's resolution of similar audit findings presented in reviews conducted by the Office of Inspector General in New Jersey and Illinois.

In New Jersey, the Office of Inspector General reported that HAVA funds were used to finance the costs of two voter outreach and educational initiatives called "Be Powerful, Be Heard." The initiative included two hip-hop summits primarily for high school and college students. The OIG questioned a little bit over \$131,000 in costs related to busing students to the events, meals and refreshments and production for the activities. And in that resolution, it was stated, that, "While the EAC encourages States to use creative methods to conduct voter education, it appears that the hip-hop summits held by the State included entertainment costs

that are not allowable under Federal guidelines.” OMB Circular A-87, Attachment B, Item 14, which is the cost of entertainment, are unallowable. The State must repay \$64,514 to the U.S. Treasury in unallowable entertainment expenditures for the hip-hop summits.”

In Illinois, the Inspector General questioned the use of almost \$4,000 to purchase activity booklets to provide students with an understanding about electing the President. In resolving this, we wrote that, “We agree with the OIG finding, that the State inappropriately used HAVA Section 101 funds to purchase activity booklets intended to provide information on voting to grade school children. Expenditure of HAVA funds for voting or election education must be targeted at persons who are or shortly will be eligible to register and vote. As such, we do not accept the State’s argument that the expense was justified because of a potential side benefit to parties. The targeted audience for this project was grade school children. The State must repay \$3,889 to the U.S. Treasury in unallowable expenses.”

And I’ll be happy to answer any questions that you may have about this.

CHAIR RODRIGUEZ:

Thank you both very much. And I apologize for the technical difficulties.

Are there any questions or comments for our panelists right now? I’m going to ask Mr. Cortes one question. You advised the Commission to consider this decision very carefully, I believe, and to allow ourselves the time to really think through this process. Can you explain that for the record?

MR. CORTES:

Yes. As you mentioned at the beginning of this, this is the first hearing that we've had related to any audit appeal. Prior to this all the audit appeals have been, and we've had several, but they've been conducted -- it's been done in writing through a tally vote of the Commission. Staff feels that that's really the best way to articulate the reasons for the appeal process. I think the hearing and bringing testimony can be a good part and useful part of gathering information in order to make the decision, but I think that having a written opinion that's voted on at a later date will allow the Commission to speak with one voice as to the issue and clearly articulate the reasons for either upholding the management decision or overruling it and accepting the appeal. So, I think that's really the main purpose behind that, is to give the Commissioners time to consider all the information that's being given to you, research any additional information that you'd like to request from the State or from the staff and then to, you know, with help of the staff, we can help you guys put together the written decision but to be able to have a written decision that the Commissioners all agree on and will be out there for other people to take from.

CHAIR RODRIGUEZ:

Very good. Vice-Chair Hunter.

VICE-CHAIR HUNTER:

Thank you, Madam Chair. Mr. Cortes, you mentioned that a lot of the monies that were used by the State of Iowa were 251 monies and then in your testimony you referenced Section 101 monies. Which one -- is it all 251 or is it -- what's the...

MR. CORTES:

Our understanding is that the funding in the single audit that's in question were 251 funds. But there is, like I mentioned, about 250,000 total which may or may not include this \$61,000 that are both 251 and 101 funds, which I mentioned in the testimony, I think. It's really going to require, either a site visit by the program staff or an audit by the Office of Inspector General to go through the records and really reconcile which spending went to which fund and determine out of the entire pot of money, what is allowable and what isn't.

VICE-CHAIR HUNTER:

Okay. So at this point we can't say definitively that they were either 251 or 101, but it sounds like we do know that there was a little bit of both. Is that accurate or we're not sure of that either?

MR. CORTES:

Well for the whole -- the "Celebrate Voting" thing was a series of activities that spanned several months. My understanding is, and we can verify this, but the amount in question was 251 money. What has happened since then, is that, in requesting information after the resolution process -- during this whole process we requested additional information and uncovered more expenditures to the same contractors for the same series of events that...

VICE-CHAIR HUNTER:

And we're not sure where that money came from?

MR. CORTES:

Right.

VICE-CHAIR HUNTER:

Okay.

MR. CORTES:

There is some question as to how much of it was -- what was spent on 251 and what was spent on 101 and how that will, you know, that will determine allowability to a certain extent for some of these expenditures. So, I think there's been a lot of questions. Due to the additional documentation we've received, it has raised a lot of questions about much more than just the \$61,000.

VICE-CHAIR HUNTER:

Do we know if the State has any more 101 funds left?

MR. CORTES:

I would have to -- I would probably need a couple of minutes to go and find their report.

VICE-CHAIR HUNTER:

Okay.

MR. CORTES:

But I can -- if there's a break at some point, I can go and find that out for the Commissioners.

VICE-CHAIR HUNTER:

Okay. And the reason I'm asking, as you know you've referenced this in your testimony, is, 251 funds, unless the State certified that it has either (A) implemented the requirements of Title III; or the amount expended is less than the minimum payment, which you told me yesterday is approximately \$11 million, then they can only use the monies to meet the requirements of Title III. And I think almost certainly, these monies don't meet the requirement of Title III. So -- and according to your testimony, the State hasn't certified.

So, you know, I'm not sure that this is even, you know, sort of ripe for our decision, which I understand you say, let's give it some time and consider these issues.

And just as a side note if I might, Madam Chair, we passed a policy last week at the -- or last, whenever that was, in Minneapolis for the use of HAVA funds and any time that the staff of the EAC has a question regarding the use of HAVA funds, from here going forward, that question will come to a vote of the Commission and will be submitted for public comment for ten days. So, some of the very issues that we're talking about now will be resolved in the future in a completely different way, with the vote of the Commission, comments from the public and the Inspector General to the extent he wants to, may also submit questions through this very same process.

Thank you.

CHAIR RODRIGUEZ:

Thank you. Do we need to clarify, though, that right now we're just talking about the \$61,000?

MR. CORTES:

The 61,000 that was questioned in the audit because the -- we're right now, kind of at the end of a fairly extensive process which is, you know, the audit was issued, then the EAC issued its resolution, now the State has appealed. So we're kind of at the last step here, of a much longer process. And so, the funding in question is the \$61,000 and Iowa's appeal that they should not have to repay that money, as was told -- as they were told to do in the audit resolution.

CHAIR RODRIGUEZ:

And the State of Iowa is scheduled for a full-blown audit or it's on the list?

MR. CORTES:

It's on the list. I'm not sure how soon that will happen. I would imagine if there's a desire from the Commissioners to move it up, you know, a request could be made of the Inspector General to do that. But -- I'm not sure where, exactly, on the list it is, but it is one of the ones that they're contemplating for either later this year or next year.

CHAIR RODRIGUEZ:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

I just have one question of Ms. Bormann. You mentioned that you went on the Web site of the Secretary of State's Office. Did you actually go into the office and do any of your gathering of the information? Or was this totally -- I wasn't quite sure whether you did both or...

MS. BORMANN:

We were in the process of doing the single audit with the Secretary of State, dealing with the current administration, and so we did do a lot of testing down there, had meetings with them. We went on Web sites, to kind of get an idea of what the program was and kind of, you know, looked to see where -- get a good idea/understanding of what "Celebrate Voting Iowa" was, also regulations, and we talked to several of the staff members at the current Secretary of State's Office, looked at claims, reviewed invoices. And that's where our information came from.

COMMISSIONER DAVIDSON:

One additional question. Were the staff members present at the events?

MS. BORMANN:

That I don't know.

COMMISSIONER DAVIDSON:

Okay.

MS. BORMANN:

We were not.

COMMISSIONER DAVIDSON:

Okay.

CHAIR RODRIGUEZ:

Commissioner Hillman.

COMMISSIONER HILLMAN:

Yes. My amplification has been taken away, so I have no idea who can hear whatever I'm going to say, so I hope you can hear my questions.

Ms. Bormann is this the first -- the report you presented, that we're considering, is it the first single audit that was conducted for this program, for the Iowa Secretary of State's Office for the HAVA funds?

MS. BORMANN:

Yes, it was.

COMMISSIONER HILLMAN:

Okay.

MS. BORMANN:

Fiscal year '06 was the first year.

COMMISSIONER HILLMAN:

Okay. And to be sure that I'm correct, because neither yours nor Mr. Cortes' testimony specifies this, the program activities that are in question were conducted in August of 2005. Is that correct?

MS. BORMANN:

I believe so, which would have been paid for during fiscal year '06.

COMMISSIONER HILLMAN:

Okay. And I just think for the record, I'd like to be sure, Mr. Cortes, that we have -- I believe from other notes that it was August 5 and 6, 2005, but I want to make sure that that's correct.

And then, I have another question and quite frankly I don't know whether it goes to our General Counsel or to you Mr. Cortes, so whoever can answer it, please. In the one, two, third paragraph of Ms. Bormann's testimony, line one, two, three, four, she states that HAVA funds may not be used to Get Out the Vote or to encourage voting. I think I understand the Get Out the Vote activity, but I'm wondering is it correct as a general that HAVA funds may not be used to encourage voting? Is that a correct statement?

MR. CORTES:

If it's defined as, Get Out the Vote activities which -- Get Out the Vote, to me, suggests that you're, you know, moving people, mobilizing people to go out and vote. And so, I think the, and I'm trying to find it here in my notes, I think this is referring to a portion of one of our frequently asked questions.

COMMISSIONER HILLMAN:

But I'm actually referring to Ms. Bormann's statement that, HAVA funds may not be used to "Get Out the Vote" or to encourage voting. What I'm questioning is whether it's accurate that HAVA funds may not be used to encourage voting. If we don't know the answer now, I sure would appreciate some clarification.

MS. BORMANN:

We did look -- if I may. We did look at some frequently asked questions and the question that I was looking at was, "May HAVA Section 101 funds be used to buy, voting is cool bracelets?" "No. In order to fit within an allowable expense of voter education, the item procured must provide information on voting procedures, rights or technology. Items intended to "Get Out the Vote" or merely encourage voting do not meet this requirement." So that's where my statement came from.

COMMISSIONER HILLMAN:

Okay. And that was referring to items being purchased?

MS. BORMANN:

Correct.

COMMISSIONER HILLMAN:

Okay. So as a general statement, I just want to be clear on the record, because it's my understanding that a lot of the activities that have happened under HAVA through voter education, in essence, encourage people to vote because it tells them how to get registered and where to go to get registered and where, you know, where their polling place is and other kinds of information, and that is encouraging voting. So, it's a far cry, if we're on the record saying that HAVA funds can't be used. It's specific to buying things

that I will accept, but as a general statement I want to make sure we're clear on that.

Thank you.

CHAIR RODRIGUEZ:

Thank you, Commissioner Hillman. Are there questions from the Executive Director or General Counsel?

COUNSEL HODGKINS:

Madam Chair, I just want to make sure, and I'll ask Ms. Bormann, if you'll just make sure that we're a hundred percent clear on this.

The funds that you tested and identified and questioned, the \$61,000, were 251 funds?

MS. BORMANN:

That I cannot answer. When we do an audit, we do not go that far, detailed. These were just expenditures that we felt needed to be questioned for additional further review.

COUNSEL HODGKINS:

Okay, then the same question of Mr. Cortes. In additional research, have we identified that these are, in fact, funds that were expended under Section 251?

MR. CORTES:

I'd have to go back and confirm that. I know that our resolution report says they were 251 funds, but I know there's a question. So we will go back through all of our documentation. The question came up yesterday from one of the Commissioners and so we've not had time, since then to do it, but we will go back and look through the documentation to confirm for the Commissioners what information we have that we used to base that on.

CHAIR RODRIGUEZ:

In the management decision, it seems clear that they're 251 but you're suggesting...

MR. CORTES:

Right, that's what I'm saying, but the question was asked to confirm that and so, I'd have to go back and check all the documentation to be able to show the Commissioners where, exactly, we identified that.

CHAIR RODRIGUEZ:

Mr. Wilkey?

EXECUTIVE DIRECTOR WILKEY:

Madam Chair, just a clarification for the record. Since this is an appeal of the decision that I made, I'm reluctant to ask any further questions of both this panel and the next panel, but for the record, I'd like to offer that certainly these decisions don't come easy. They are done with a great deal of consultation with the Office of General Counsel, the Office of Inspector General and, of course, the Division responsible for this. And that is why, you know, we look at the facts. We look at the policy that is in effect. We look at the Circulars that we are dealing with and we make those decisions based on that. And that is why I applaud the policy that recently was approved, so that some of these decisions will now get made by the Commission, be on the record, so that might make our job a little easier in the future, in determining these things.

With that, I'm not going to ask any questions, but I did want to clarify that for the record. Thanks.

COMMISSIONER DAVIDSON:

Madam Chair?

CHAIR RODRIGUEZ:

Yes, Commissioner Davidson.

COMMISSIONER DAVIDSON:

In reading from the October 31, 2007, letter from the Secretary of State of Iowa's office, it does speak in the second paragraph, the first, that is, ident -- "Please consider that this is a letter accomplishing material as an amendment of the audit resolution report, received by the State of Colorado" (sic), and I'll leave out the dates and a few things. But the State appeal from that part of the report, requiring that the State, to pay to the U.S. Treasury \$61,238, for the alleged unallowable entertainment costs funded with Section 251 funds. So, Mr. Cortes, you might review that letter. It might be specific in there, I don't know.

COMMISSIONER HILLMAN:

Commissioner Davidson, you did mean the State of Iowa?

COMMISSIONER DAVIDSON:

What did I say? I'm sorry.

COMMISSIONER HILLMAN:

Colorado. You love Colorado, I understand.

COMMISSIONER DAVIDSON:

Yes, I love it. And I haven't been home for awhile.

COMMISSIONER HILLMAN:

They'll perk up when they find out they have to repay \$61,000.

COMMISSIONER DAVIDSON:

That they have to repay some money. I think that would be a conflict for me to vote on that one. So you might review their letter.

MR. CORTES:

I will review all our documentation and get back to the Commissioners with the documentation that we based it on.

CHAIR RODRIGUEZ:

Okay. Before we call up our next panel, I'm going to ask for a ten-minute break, to give Mr. Cortes some time to do some research. Ms. Bormann, I'm going to ask you to stay available. I appreciate that. And Mr. Cortes will come back and answer a couple of questions, and then we'll call up the next panel. So we are on break.

[The Commission recessed at 11:25 a.m. and returned to open session at 11:38 a.m.]

CHAIR RODRIGUEZ:

Okay. We'll go ahead and I don't see Mr. Cortes, so we'll bring up the next panel. Oh, there he is. I'm sorry.

MR. CORTES:

Sorry, I was getting one of the answers to the questions I was asked.

CHAIR RODRIGUEZ:

Okay, will you repeat the question for the record? And we are readjoined.

MR. CORTES:

Okay, I have -- asked three questions that I went to go research and I was able to find answers to two of them.

Let me start with the one I don't have an answer to is, there's

a lot of documentation and paperwork that we have, so in terms of showing the expenditures that were 251 versus the 101, I'm not able to give you that answer today. But I will continue working on that and confirm for you that the funding -- the 61,000 in question, was 251 funds.

The next question was, how much 101 funding the State had left, and the answer is none. They filed a final report last year for their 101 funds, so as of December 31, 2006, they had no Section 101 funding remaining.

And then, I also spoke with our Inspector General in terms of the question was, where in the line-up or if Iowa was scheduled for an audit. They are on the list for this year, but the audit has not been scheduled. In speaking to the Inspector General, he said that, if a request was made for that to be conducted, that he could probably get the auditors on the ground within three weeks of the request. So those are the responses to the questions.

CHAIR RODRIGUEZ:

Okay, are there any questions about these responses?

Thank you very much.

We have three speakers on the next panel. Is the order Trimpa, Krogmeier and Klassen? Okay, come on up now, Trimpa, Krogmeier and Klassen. I'll introduce the panel and start with a disclosure.

The first speaker, Ted Trimpa, who is a dear and old friend from Colorado, he's a shareholder in Brownstein, Hyatt, Farber, Schreck and works out of the firm's Denver and Washington D.C.'s offices. He is co-chair of the firm's Government Relations Group.

Mr. Trimpa practices in all areas of Federal, State and local legislative law, with a special concentration on public policy, political strategy and political participation. He has extensive multi-State experience. He's a graduate, Magna Cum Laude, from the University of Denver and he has his law degree, also from the University of Denver. And I didn't know this, but in 2006 and again in '07, the publication "The Best Lawyers in America" recognized Mr. Trimpa in the area of government relations law. Congratulations.

I'll introduce the whole panel. Charles J. Krogmeier has been the Director of the Iowa Department of Management since January 2007. Previously, he served as First Deputy in the Secretary of State's Office, from 2004 to 2007. He also served as then Governor-Elect Culver's Transition Director, beginning in November of 2006. He began his public service career in 1979, as a Lee County Supervisor through '86, moved on to become the General Counsel to the Iowa Department of Transportation '86 to '89, and later served as a Deputy Attorney General in the Iowa Attorney General's Office '89 to '97. And for seven years he was a partner in the law firm of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum. Mr. Krogmeier is a graduate of the University of Iowa and Drake University Law School.

Joni Klassen is the Deputy Chief of Staff for Operations and Administration for Iowa Governor Chet Culver and Lieutenant Governor Patty Judge. She has been with the office since January 2007. Previously, she served as a Deputy in the Secretary of State's Office 1999 through 2007. She also served as, then

Governor-Elect Culver's Transition Deputy Director beginning in November of 2006. She began her career in State government in the Attorney General's Office 1985 to 1999. Ms. Klassen is a native of Grundy County and attended Ellsworth Community College prior to starting her career in public service for the State of Iowa.

Welcome. And Mr. Trimpa, are you going to tell us how it goes?

MR. TRIMPA:

Yes, Madam Chair.

CHAIR RODRIGUEZ:

Okay.

MR. TRIMPA:

I will be presenting first and then we'll have Mr. Krogmeier and Ms. Klassen be here for questions.

CHAIR RODRIGUEZ:

Okay, thank you.

MR. TRIMPA:

Madam Chair and members of the Commission, Director Wilkey, Elections Commission staff, General Counsel, good morning and thank you for the opportunity to speak to you today on behalf of the State of Iowa and Iowa Secretary of State's Office. My name is Ted Trimpa. I'm a shareholder with the law firm of Brownstein, Hyatt, Farber, Schreck. I am speaking on behalf of the State and the Secretary of State's Office in respect to Finding 1 of the management decision received by the State of Iowa on October 2, 2007. As the Chair has earlier introduced, with me is Mr.

Krogmeier and Ms. Klassen, who have been involved with this program and was with the Secretary of State when these funds were expended. We are here today to answer any questions you may have as part of your fact gathering for this appeal. We also have Frank Chiodo with the current Secretary of State's Office from Iowa, who is with us here today, as well, if there are current questions for him.

Prior to getting to my testimony about the appeal on Finding 1, which is what this hearing is about, there are a couple of items that I wanted to cover. One is Finding 2 of the management decision. This is the one, wherein I believe the decision that was not a final determination by Mr. Wilkey. This is concerning, I believe, the approximately \$251,000. The State of Iowa is ready for the audit, you know. Let's figure out how those monies were spent, to see if they were in accordance with the law because we have every intention of following the law, but my testimony is not going to be addressing that today because we don't have a decision yet, since this is an appeal.

Secondly, regarding whether they were 251 funds or 101 funds. To be honest with you, we were confused too. And I think, we had a discussion about it this morning, trying to figure out, because I realize that it's somewhat dispositive, as to uses and what the standards are and look forward to figuring that out, because I think on our end, at least on the State of Iowa's behalf, that at the time those monies were expended, I think they thought they were 101, but we're trying to find that out, which is another reason to argue and hope for a few more days for you to do

additional investigation. We can work with you to try to figure that out.

In regards to the Audit Resolution Report's Finding 1, which originated, as you know, from the Iowa State Auditor's Office through a single audit act, for the year ending June 30, 2006. Specifically, as you know, the single audit report classified costs, totaling \$61,238, related to a celebration of voting heritage and voting rights, as questionable costs, because, according to the State Auditor, they did not meet the requirements of the education.

On November 1, 2007, the Iowa Secretary of State's Office filed its appeal, of the management decision of Mr. Wilkey, which required the State of Iowa to pay the U.S. Treasury this amount, the \$61,238, for alleged unallowable entertainment costs, funded with HAVA funds for the fiscal year 2006. The State of Iowa has not appealed the other findings of this management decision. Finding 2 is not a decision yet, so we don't have anything to appeal. And we have proactively taken steps to resolve the other issues that were raised within the management decision.

While my testimony today, and hopefully answers from representatives from the State of Iowa, will provide the Commission with additional facts and analysis, regarding the questioned expenditures, we ask that the Commission, in accordance with your rules, take up to an additional 60 days for further independent fact gathering before reaching a final decision. At the conclusion of the 60 day fact gathering period, we may be asking, don't know, may be asking the Commission either to reverse Finding 1 of the management decision because of the lack of completeness; or

reverse Finding 1 because the expenditures were permissible and the only error was a failure to follow appropriate procedures.

The State Auditor's single audit report and the management decision, within the audit resolution report, I'm going to call them the "reports," each provide only a broad, general description of the use of the funds. The reports lack the necessary detail to determine conclusively, whether such funds were spent in compliance with HAVA and the Office of Management and Budget's Circular A-87. In this case, an understanding and analysis of the broader context, within which the questioned expenditures occurred, and how they were categorized is essential to determining whether such expenditures were educational uses or similar allowable uses under HAVA and Federal cost principles.

As the appeal provided, under the banner of "Celebrate Voting," a project was undertaken by the Iowa Secretary of State's Office, the Iowa Civil Rights Commission, the Iowa Department of Human Rights, the Iowa League of Women Voters, the Iowa-Nebraska Chapter of the NAACP, the Carrie Chapman Catt Center at Iowa State University, the Iowa Historical Foundation, and ID Action, the advocacy arm of the Governor's Development Disabilities Council. These eight groups cooperated to sponsor a series of educational forums and voter education events, beginning in August 2005 and ending in January 2006. The Iowa Secretary of State's Office provided a general summary of these events as part of the appeal. And I should also note that these events were cofunded, so each one of these organizations put funding in, to

cover various aspects of these activities from August of '05 through January of '06.

Mr. Krogmeier and Ms. Klassen were both involved in the planning and execution of the "Celebrate Voting" events and can explain the context of some of these events in more detail.

But to help with this, there are a couple of documents that I want to submit into the record for today's hearing, which I think will also help provide a clearer context or a clearer understanding of the context of the events. The first one is two -- it's double-sided and it says "Celebrate Voting" and it says, "What HAVA means to Voters." And this front, it states, "The implementation of HAVA in Iowa benefits voters in several ways." And then the document discusses about counties getting better up-to-date voting systems. It emphasizes that every Iowan now has access to voting, that everyone who is eligible to vote, can vote. Then on the reverse side, and I think this is just as important as to voting rights and participation today, is the history. How did we get here? "Important Steps to the Path to Voting Rights for All." The first side talks about women suffrage and how, and I think many of us forget, that women didn't have the right to vote in the United States until 1920. Then we talk about the Voting Rights Act of 1965 and the path that led up to the Voting Rights Act of '65. So many of us I think, today, fail to realize the impact, the fact that we had so many discriminatory practices prior to this time, that prevented people from voting and we need to be reminded of that, so we understand the value of this great, great Constitutional right. And then, finally,

the Americans With Disabilities Act of 1990. Now these documents were all part of the “Celebrate Voting” educational forum activities.

The second document I would like to put into the record is something titled, “Building Communities. Celebrate Voting, An Academic Symposium.” And this was talking about voting rights struggle, how we got there, what does it mean today, and what is the future of voting rights and where are we going. Again, part of the educational activities of what HAVA is, how we got there and what voting rights mean today. And then finally, this is a Plan of Action, and I’m going to go through this document a little bit more later. This discusses some of the various performances that were conducted during a day and this is where there’s kind of a blend of some of the children’s activities which, granted, cannot be funded with HAVA funds, but it also talks about a hip hop discussion and then performances, art performances, which this document doesn’t talk about it and there’s needs to be further investigation, but was all done around voting themes. Certain things that you should know about your voting rights, and then they were explained in an artistic way, through dance, through singing. And it’s one of the greatest ways to learn. Think about the way we learned the alphabet. We learned the alphabet by singing. One of the greatest ways to get people to understand and learn is to do it through music.

So these reports, the State Auditor’s report and then the management decision, have questioned various expenditures and then categorized them, in such things as speakers, performers, supplies, children activities and travel. And I will note, that these

categories, are categories that are done by the State Auditor, not something done according to HAVA or according to your rules, which then creates confusion later on, as to what should be allowable or not, because, just because you're a performer, doesn't necessarily mean it wasn't educational. So, while these categories may be likely, accurate, the general nature and descriptions fail to explain completely, the individual expenditures within each category. A more suitable application of expenditures would be for, the management decision to allow these expenses, under OMB Circular A-87's Meetings and Conferences category. This category considers allowable expenses to include, costs of meetings and conferences organized for the dissemination of voter information, much like the academic symposium. Further, allowable expenses include the costs of meals, transportation, rental of facilities, speakers' fees and other items incidental to such meetings and conferences. In contrast, the Audit Resolution Report, the management decision, relies on OMB Circular A-87's Entertainment Category. This category does not appear to be relevant to "Celebrate Voting" events, as this OMB category is specific to costs of entertainment, such as "tickets to shows or sports events, meals, lodging, rentals, transportations and gratuities." In order to illustrate this misapplication, please consider the following events that were part of "Celebrate Voting."

First, the single audit report specifically lists expenses related to "an internationally renowned opera star" performance at an event, August 5, 2005, as an example of an unallowable expense. While Iowa native, Simon Estes, may be a world-

renowned opera performer, his role at the August 5 event, was limited to two songs as part of a more than two-hour program that recognized several Iowans, who received National Association of Secretaries of State medallions for their personal role in expansion of voting rights in America and in Iowa. But more importantly, Mr. Estes' attendance at the event was ancillary to his primary purpose, which was the following days, and that's part of that plan that you're going to see as part of the record, which was to actively participate in a series of workshops with performing artists of various ages, who discuss how arts can be used to foster voting rights and as voter education opportunities. Specifically, Mr. Estes' central message focused on how arts can be an effective tool for political, social change and therefore, expand voting rights. His message was reinforced by examples of his personal struggles, as one of the few African-American opera performers in the 1960s. Apparently, rather than exploring the broader context of his involvement at the events, the reports summarily and incorrectly placed his expenses within the category of entertainment, based simply on his profession.

Second, the Iowa Secretary of State's Office paid a fee to Virginia Tech Professor Nikki Giovanni, for her role in leading the voting participation workshops on August 6, 2005. Her purposes that day, cannot be fairly categorized as entertainment, as she brought together hundreds of participants that day in a closing session, to disseminate information intended to increase the likelihood that the participants will successfully continue their efforts at increasing voter participation. Again, this is part of the Plan of

Action, the document that I asked be entered into the record earlier. She focused the participants on the importance of voting as an essential American right. Similar to the expenditures of Mr. Estes, the reports fail to properly categorize this expenditure in the actual context of the events. So, these expenses related to Mr. Estes and Professor Giovanni were likely permissible under the OMB Circular A-87 Meetings and Conferences category. As I previously noted, the category allows further fees and expenses.

Just because you're an opera singer or a poet or a performer, doesn't mean that you can't also educate, and so many times the context is critical and which is why we ask you to take an additional look and provide additional investigations.

So, based on the facts provided to date, we believe the Audit Resolution Report lacks the completeness required to make a final determination. For example, we're not sure what kind of money it is. They weren't for sure where the money was coming from, which we should have known. The State of Iowa, though, is confident that in the end you'll find that expenditures were permissible and those that were not, we'll remedy the situation promptly, and hopefully this process will lead to a more clear and transparent one to go forward, so everyone knows what you can and cannot use Federal monies for.

So with that, I thank you for this opportunity and am open for any questions.

CHAIR RODRIGUEZ:

Thank you. And Mr. Krogmeier and Ms. Klassen's role, your role here is to answer questions? Or do you have a presentation to make?

MR. KROGMEIER:

No, our intention was to answer questions or try to fill in the blanks maybe in some way.

CHAIR RODRIGUEZ:

Very good. And then you introduced someone else who is here, from the current Secretary's Office, and I'm sorry, I didn't get his name.

MR. TRIMPA:

Yes, Frank, it's Chiodo correct?

MR. CHIODO:

Yes.

CHAIR RODRIGUEZ:

Chiodo?

MR. KROGMEIER:

C-h-i-o-d-o.

CHAIR RODRIGUEZ:

C-h-i-o-d-o. Thank you, Mr. Chiodo. Okay, I'll turn to the Commission and see if there are questions or comments you'd like to make. Commissioner Hunter.

VICE-CHAIR HUNTER:

I appreciate your, thank you, Madam Chair, your all taking the time to come here. I wish you wouldn't have to do that. It seems like a huge burden to travel all the way from Iowa on a record that's clearly not fully developed and I regret that for your sake. But in

any case, I look forward to, you know, having the time for all of us to more fully develop the record. Clearly, it is almost dispositive, in my mind, you know, what kinds of funds were they. And if they were -- depending on what kinds of funds they were, of course it's a different analysis. And I think, if they were 101 funds, there's a lot more flexibility. If they're 251 funds, in my view -- or not in my view -- in HAVA's view, there are many more restrictions on the use of those funds. And so, clearly that's something that we need to know immediately. I certainly appreciate your filling in the record about -- in more detail about the event. And I think, unfortunately, maybe the State Auditor, and I haven't -- I don't know this -- but it appears that maybe the State Auditor, you know, could have used a little bit more information about the proper use of HAVA funds, in doing her report. And I too hope that this process will increase transparency and provide more guidance for States going forward.

CHAIR RODRIGUEZ:

Thank you, Vice-Chair Hunter. Commissioner Davidson.

COMMISSIONER DAVIDSON:

I do also thank you for being here today, and it is good to see an old friend. I guess that's the reason why Colorado was sticking in my mind, because we go back a long time.

A couple questions I have and, you know, the argument about whether it's entertainment or whether it's educational is one that I really have a problem with, especially when so many of the States and people do things by calling people and saying, "Would you be willing to give this, your time, and not charge us?" And I do realize this is a famous opera singer that was there and -- was

there, but where do we draw the line? I mean, you know, this is a real problem I see in our arena is, where is the line drawn on things like this? So can any of the three of you answer it? And I look to Mr. Trimpa.

MR. TRIMPA:

Madam Commissioner, the line needs to be drawn and I think the frustration that the State of Iowa has experienced, and I've experienced reading through this, it's just not clear what the rule is. And so, I think that there's a clear case that Mr. Estes' performance, Professor Giovanni's, and then I forgot to mention, because we just saw looking at the invoice records from the Auditor's Office, that they actually counted Julian Bond's speaking fee, because Julian Bond spoke at events as well, as part of, I think what they consider to be unallowable costs because I can't quite match the numbers, you know. What's the difference between Julian Bond educating about it and Simon Estes? Their experience around the 1960s and the Voting Rights Act are admittedly very different, you know, with probably Julian Bond having more of a direct connection, than Mr. Estes. But, you know, there may have been experiences that Mr. Estes had in Iowa, which is probably not known, for accomplished, you know, African-Americans that are moving up and he gave experiences and talked about experiences involving voting.

I think what's going to have to happen is, there's going to have to be some direction from the Commission, you know, and some rules, saying this is allowable, this isn't, because you're going to always have these kinds of problems, you know. Should you

penalize a State because they can't find people who will give it for free?

MR. KROGMEIER:

Maybe I can clarify a little bit more. And that is a valid question, and certainly, if we would have had guidance a couple of years ago, to clarify some of those things, I think it would have helped us and maybe other States as well.

But in the context that we were talking about, the "Celebrate Voting" events as the handout said, were a whole series of events I think the focus has sort of been on this first weekend which had this gala, which was maybe not a correct term or the best term to use, to kick the thing off. But it went for several months. And as those groups came together, earlier that year -- and we had a mission in the Secretary of State's Office, under HAVA, to do voter education, however that's defined -- when those groups came together, I don't know where the idea came from, but somebody in that group said, Well, you know, we've got the 40th anniversary of the Voting Rights Act coming up this year. Don't forget 85 years ago, which is within a few days, it's also in August, of the passage of the Amendment for Women's Rights to Vote." And then others in the group, particularly from the special needs or disability community, kept saying, "Well part of HAVA is all about new voting machines to address issues of persons with disabilities and those kind of things and that's an important element, so let's bring some discussion of that into all of this," and came up with a term of "Celebrating Voting" or celebrating our democracy and civic participation, as a theme and to use various people's stories,

personal stories, to help explain and elaborate on that theme of citizenship and voting rights and what it means as an American, and in our case, particularly, an Iowan, but as an American to talk about that.

Mr. Estes' personal story -- he sang two songs Friday night, "Climb Every Mountain" and I can't remember the other one. But that was part of a three or four-hour thing Friday night. Saturday, he was there the whole day and participated in several workshops and led some discussions with educators about how the arts can be used to foster voting rights and civic participation and things like that and how we often don't think of that connection, those of us who are bureaucrats, that artists and educators need to try to use that. In some populations or some communities, it's more important than others, maybe and you have to understand the culture that you're dealing in. So, that's why some of those various groups were asked to participate. Mr. Estes started out in the '60s as an Iowan, trying to make it in the opera world, went off to New York, didn't do very well, ended up making his career -- in the early parts of his career in Europe, as a lot of African-American entertainers did during that era, came back and then becomes a big star. But he's back in Iowa and teaching at a couple of universities there and is on the faculty and talking about the arts. But his personal story of his role in trying, within the arts community, to engage artists in participation in the civil rights and voting rights movements and those kinds of things, was helpful to explain, put some context about what voting rights means.

The same thing was true of Nikki Giovanni, in terms of where she came from, in the '60s and '70s. I had never heard of Nikki Giovanni, before the group said, you know, "If we can get her, she would be very good." She wrote a lot in the '60s about voting rights and participated.

At the Friday night event, the main function of that event, was to honor and recognize Iowans who had done significant things in the voting rights arena. We had two and we gave out, as former Secretary Davidson is familiar, NASS medallions. We gave out eight of them, if I remember right, eight or ten, to persons who had done some significant things, with regard to voting rights in their respective spheres. We had two living members of Congress from Iowa who were there, who voted -- the last two living members from Iowa, who voted for the Voting Rights Act of '65. We recognized them. And they were able to educate the group about what it was like. One of them was a freshman, a first-year Congressman to be involved at that time in Washington, in some momentous occasions.

We had a young man named Zack Hebl, who we honored. Zack was a junior I think in high school at the time, now in college. He's a person with special needs and as some of you may -- I'm sure you know, in many States because of HAVA -- not just because of HAVA -- but as part of HAVA, in some cases we closed or moved polling places because of disability access. Some polling places, just were not very accessible, and so we had a big effort to try to make them more accessible and push that demand on the local jurisdictions. And we ended up Statewide, out of about 2,000

precincts, closing 200, I think or consolidating them. But one of them was Zack Hebl's precinct. Zack lived in a rural area, had special needs, was disabled, and his precinct, which was an old school house, it wasn't handicapped accessible, was going to be closed. He took it upon himself to organize his Boy Scout troop, without any money, without any public money, get donations from the lumber yard and volunteers and, you know, to make that voting place successful. So, we thought that was worthy of recognition, as someone who had taken a step on their own, you know, to further, foster voting rights.

We recognized former Governor Ray. In the '70s, when Robert Ray was our Governor, he was one of a couple of Governors who really took a lead on bringing a lot of refugees from Cambodia and Southeast Asia to the United States and he was recognized for that by President Reagan, later. But we recognized him for his efforts to add another group to our democracy and our participation in Iowa.

So, we tried to put several of those things in context and use those stories that various individuals had.

COMMISSIONER DAVIDSON:

And I appreciate that. I guess, you know, as -- also as you said, we come from the same world for a while and I attended several workshops as we were getting ready for HAVA and implementation of HAVA, as everybody else did, and the training that was done before I got here from the IG. And, you know, the Circulars seem to be pretty specific when you said, you know, you need more information out there, in our Circulars and our most frequent asked

questions, you know, when it really goes into the primary purpose of which the dissemination of technical information and so, you know, part of that I think that, as we go into further some of the questions, I hope that will be really looked into is, some of those things because entertainment, I know, was one that we were all trained on quite extensively, that entertainment was not something - you'd better be very careful of any type of entertainment. Even when we were doing our States plans, we were warned of things we could do, calling in people to work on State plans and what we couldn't do.

So I hope that -- I am going to suggest to our IG that we move this audit, a full audit up, immediately, as fast as he can to the list, that's going to be a suggestion of mine, so that we can get complete information of what has been done, because I feel that some of the things you brought up, yes, but some of the things, I'm not sure I can go along with. But that's the beauty of being honest with each other. So, as we move forward I hope to be able to get more information as the audits come out and look forward to getting that information, so we can make decisions wisely. Thank you again.

CHAIR RODRIGUEZ:

Thank you, Commissioner Davidson. Commissioner Hillman.

COMMISSIONER HILLMAN:

Yes. I certainly will look forward to getting more information through whichever vehicle we can, focusing specifically on the issue that's being appealed today. And a part of the lens that I will

be viewing this through is, what Iowa intended and believed were permissible voter education activities and in what context.

And so, I have a couple of questions that may not sound like they're directly on point, but in my head they are. And one is, did the Iowa Secretary of State's Office do its own interpretation of applicable Circulars? Or did you have outside help, either within the State from other State agencies, to be able to try to see through the government maze, to figure out what part of money could be used for what and which Circulars applied to which area of spending?

MR. KROGMEIER:

I think we -- you're talking about OMB Circulars?

COMMISSIONER HILLMAN:

Right, uh-huh. The things that would have governed the spending of the Federal HAVA dollars, yes.

MR. KROGMEIER:

Right, right. I don't recall specifically, whether we did, in terms of the educational items. The State Auditor's staffer, who was sort of assigned to the Secretary of State's Office that does the routine audit work, I know we've met with several times, during that time to go over various things we were doing. Frankly, because the amount of money was much bigger, I know we discussed several times, the payment process to counties, reimbursement process of voting machines. That was a big part of the focus and making sure we were trying to get that process right. And there were still a few things that came up on the audit on that, but nevertheless I remember we had discussions about that. I don't recall whether we

specifically had any discussions with the State Audit staff on -- prior to these issues. I don't -- I don't believe we did but I don't recall.

COMMISSIONER HILLMAN:

Do you feel that in the additional research, the items that comprised the 61,000 some odd dollars will be able to be parsed out to identify specifically what the expenditure was for?

MR. TRIMPA:

Yes, Madam Commissioner. We actually, just got to review some of the invoices and see how the -- I think there's two items, one is 25 and one is 28 -- 3,000. It breaks them out to the penny.

COMMISSIONER HILLMAN:

My other question is, on the items in question, would Iowa State funds, same event, would Iowa State funds have paid for the activities, as permissible under whatever Circulars and regulations you all have?

MR. KROGMEIER:

That might be a question for the State Auditor's Office to answer. But generally, again, the State agencies, Secretary of State's Office, can put on conferences, can pay speakers for conferences. I don't know that we have a definition that gets into entertainment, as much, but the Secretary of State's Office and other departments routinely put on conferences and pay some expense out of the State funds.

MR. TRIMPA:

Yes. And I don't think it necessarily clear, as the rules are exactly the same.

MR. KROGMEIER:

Yes.

COMMISSIONER HILLMAN:

No, I understand. I'm just trying to put it on the context of, if I did this here and then transferred that activity over here...

MR. KROGMEIER:

Right.

MR. TRIMPA:

Right.

COMMISSIONER HILLMAN:

...does the understanding of the rules bleed over, because they are different at the State level, than they are at the Federal level?

MR. TRIMPA:

Yes, I honestly don't know the answer to that.

COMMISSIONER HILLMAN:

Okay.

MR. KROGMEIER:

The first trigger in Iowa, at least the way our procedure works, the first trigger would be, well, either Ms. Klassen or myself initial the invoice, as you'll see that when you look at the invoices. One of us would have initialed the invoices being okay for payment. The comptroller or the internal audit person in the office would have paid that bill. There's a separate State agency, the accounting office, their pre-audit folks would have also looked at it and that's one place, sometimes, where things get kicked out or more information is needed, prior to making the payment. None of these were ever kicked out in that context, that I recall. And of course, the State Auditor does the audit at the end of the year.

COMMISSIONER HILLMAN:

And my final question, is this the first single State audit that the Iowa Secretary of State's Office had been through? Or had you all received Federal funds in the past of any significance?

MR. KROGMEIER:

Prior to '06, I'm not sure if the Secretary of State's Office was included in the '05 single State audit. We would have received some HAVA money in, before the end of fiscal year '05. I don't recall that we were. Could have been. I mean there's always a single State audit for all State agencies.

COMMISSIONER HILLMAN:

Right. But I mean prior to HAVA, do you know, had the Secretary of State's Office been included?

MR. KROGMEIER:

I don't believe so.

COMMISSIONER HILLMAN:

Okay, thank you.

MR. TRIMPA:

I mean I think...

COMMISSIONER HILLMAN:

I'm sorry, yes.

MR. TRIMPA:

Madam Commissioner, that question, actually is probably more appropriate for the Auditor...

MR. KROGMEIER:

Right.

MR. TRIMPA:

...because they would know more than...

MR. KROGMEIER:

They would know that.

COMMISSIONER HILLMAN:

Right, okay.

CHAIR RODRIGUEZ:

Ms. Klassen did you want to add something?

MS. KLASSEN:

I don't recall, I was just agreeing, but I don't recall anything while we were in office.

COMMISSIONER HILLMAN:

Okay. If it would be okay, since -- she's still here, right? She is still here. If she knows the answer to my question, as to whether the Iowa Secretary of State's Office had been included in single State audits, prior to the HAVA funds. Or was this their first experience?

MS. BORMANN:

Their expenditures would have been audited in accordance with doing their department, but '06 was the first year that HAVA was a major program, so audited specifically for Federal requirements and HAVA requirements.

COMMISSIONER HILLMAN:

Right. Yes, thank you.

CHAIR RODRIGUEZ:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

I'm sorry, I had a couple more questions. You know, I looked at the response and I noticed how many people attended the kickoff and

then the gala. First was -- the kickoff I take it, was the first day and then the gala, maybe the second day?

MR. KROGMEIER:

I think the item that's referred to in the summary, as kickoff, was at noon time, Friday downtown in the plaza area, where a lot of people congregate, particularly in the summertime event. And then the gala was that evening. The same evening, Friday evening.

COMMISSIONER DAVIDSON:

So there was 200 people at the downtown kickoff and then 350 at the gala that evening.

MR. KROGMEIER:

Right.

COMMISSIONER DAVIDSON:

Whereabouts was the gala event? Where did it take place?

MR. KROGMEIER:

It was in the State Historical Building near the capitol.

COMMISSIONER DAVIDSON:

So, obviously that you didn't have to pay fees for -- rental fees or anything like that?

MR. KROGMEIER:

You know better than I do. I don't believe so. Everything you do at the State Historical Building is not free, but they were one of the -- the Historical Foundation was one of the sponsors, so I don't believe we paid for that.

COMMISSIONER DAVIDSON:

Okay. The other thing that I think will come out in the audit is, you had a contractor by SPPG. I'm sure that with the full audit, that that will come out. Did they do any of the work for the office?

MR. KROGMEIER:

State Public Policy Group, or SPPG, is a consulting firm in Iowa, that does a lot of work for a lot of government agencies. They did some general consulting, developing the HAVA plan. They were very much involved in putting that plan together in '04 and then amending it in '05. They did a lot of the -- they helped set up the training program for pollworkers and election officials, that we sponsored. They did a lot of consulting on HAVA over a period of about three years.

COMMISSIONER DAVIDSON:

Was that bid out to...

MR. KROGMEIER:

No.

COMMISSIONER DAVIDSON:

...the companies? No?

MR. KROGMEIER:

No, it was not. And that was cited in the audit report, I think resolved, satisfactorily, but it was not...

COMMISSIONER DAVIDSON:

Oh okay, I just didn't see that. Okay. All right, well I'm sure all the rest of my questions will be answered when the audit is done.

Thank you.

CHAIR RODRIGUEZ:

Thank you. I look forward to learning more over the next -- I don't think anyone is going to ask for us to render any sort of decision today, but I need to check. Is anyone? Okay, we will take this under advisement. If there are no more questions -- Vice-Chair Hunter?

VICE-CHAIR HUNTER:

Madam Chair, one quick question. Do we anticipate receiving more information from the State of Iowa in the near future, regardless of whether there's a future audit?

CHAIR RODRIGUEZ:

I think we're going to have a number of questions. Mr. General Counsel?

DEPUTY GENERAL COUNSEL GILMOUR:

Can I add to that very question? I don't know if I can be heard or not. I mean, ultimately, the purpose here is to get the information out there. And you can tell here that these Commissioners are independent minded. They're going to look at Mr. Wilkey's conclusions and they're going to look for the verification, but this is your opportunity to be heard and provide information. So, for example, Mr. Wilkey concludes that, you know, they were 251 funds used. However at this point we've received no information from you. Are you going to provide, for example, in this area, specific information saying, "We spent the money. Here's exactly the money. We debate that it was 251 money". That's just sort of one example, the sort of thing we're talking about. Also, providing very specific information. For example, a lot of discussion has been -- revolved around this opera singer, who I don't remember

their name. I'm disclosing myself as not a cultured opera aficionado here, but ultimately the question is, you know, one day the individual sang at an event and the next day they spoke. So, are you going to present specific information saying, "This particular event or activity was entertainment. This particular part of it, was not"? So, an individual can serve two roles. They can be an entertainer one day and the next day they can be a speaker. I mean, that's a very good point to raise. Which ones were HAVA funds used for? Was it both? Was it split purpose. You raised some forms. Were these forms paid for with HAVA funds? Was that the part of the event that was paid for with HAVA funds? Or was a part of the event specific for entertainment paid for with HAVA funds? So, as you raise these issues, can you provide certain particular things and tell us how they improved the administration of Federal elections and distinguish them from other activities? That's the kind of information that I think we're talking about here. And to see this, this is your opportunity to be heard to provide us that information, to dispute whatever conclusions may be there.

MR. TRIMPA:

Counsel, I understand that. What I would ask, and I realize that this is the hearing for the final determination, but if you take a look at the record of how it's progressed along the way, this hasn't been kind of the smoothest path. And since this is the first appeal in front of the Commission, what I would ask, if it's possible, is if we could, as part of that 60 day, essentially do, it's kind of like a mini Briefing schedule. So, you kind of shift it back and forth, so we can submit

something explaining this, and then you could ask questions, we could answer them and then you can render a final decision after that. So, it gives us an opportunity to provide this information. I was brought onboard, you know, at the end of the last week. So, we're trying to cobble this together as quickly as we can, but provide you with the information that you need, in order to make the correct decision. But I also think, that given the importance of this, in terms of the precedent that it's setting, that it's better to get it right, than not.

VICE-CHAIR HUNTER:

Just a point of information for the Executive Director or the Counsel. Refresh my memory, what is the timeline, with respect to the procedures of the Commission? The State of Iowa has appealed the decision. Is it that the Commission has 60 days to make a determination? Is that...

EXECUTIVE DIRECTOR WILKEY

That's correct.

DEPUTY GENERAL COUNSEL GILMOUR:

60 days. And I believe the 60 days, my recollection, can sort of begin upon the receipt of new information, as well. I'll go back and look for sure, but that's my recollection, that it's 60 days. But if we get more information, and it looks like that's the way the discussion is going, that time period can be extended on receipt of that information.

COMMISSIONER DAVIDSON:

Yes, that was the one thing I was going to suggest. I think that there's a lot of things that's come up, that you could provide us with

information to really start this, because I mean, you've got the appeal letter and if it's incorrect and all the information that you've got that you really feel that needs to be added, I think we need that as soon as possible.

COMMISSIONER HILLMAN:

Clarification on that. In the 60- day procedure, the Commission can, I gather, ask for more information, clarification, whatever we feel we need to make our decision. Is that...

DEPUTY GENERAL COUNSEL GILMOUR:

It's 60 days from the receipt of the appeal, which probably would have started, actually, sometime before this point. But certainly, this is a request for more information, I would say, this event here, and if we are request additional information -- essentially the policy says where additional information is needed or requested, it's 60 days from that date. So...

COMMISSIONER HILLMAN:

So that date being today?

DEPUTY GENERAL COUNSEL GILMOUR:

Or again if future information is requested after that date officially.

COMMISSIONER HILLMAN:

Okay.

COMMISSIONER DAVIDSON:

I've got one more question. I mentioned earlier, that I was interested in the auditor having it moved up on the list, so that we could do a full audit of the State. Do we need a consensus of the Board to do that or can one Commissioner actually request that?

DEPUTY GENERAL COUNSEL GILMOUR:

I mean ultimately, and we can talk about that further and look into it...

COMMISSIONER DAVIDSON:

Okay.

DEPUTY GENERAL COUNSEL GILMOUR:

...but ultimately it's up to the IG how the IG proceeds. Certainly one could -- the Commission could speak and request a change in priorities, could request a special audit, which is another HAVA authority. I mean these are all options that exist and can be communicated to the Inspector General.

CHAIR RODRIGUEZ:

I still have some questions. The -- of course a lot hinges on whether these are 101 or 251 funds. However, yesterday in a briefing on this issue, we had a lot of discussion about page 12 of the EAC resolution report. Do you have that in front of you? And I'm going to look to Commissioner Hillman because she had some particular points about this. It reads, "Furthermore," the third paragraph, "the OSS improperly used Section 251 funds," and I know that's -- we're going to clarify that point -- "to finance these activities. In that regard, States may use 251 funds for educational activities as they relate to the improvement of elections for Federal office, only if they certify to EAC that (A) the State has implemented the requirements of Title III of HAVA; or (B) the amount expended with respect to such activities does not exceed an amount equal to the minimum payment amount, applicable to the State under Section 252(c). OSS has not certified to either of the conditions." Do you think that -- we had a lot of discussion about when you

would have, if you had, which you haven't, or which the Secretary of State hasn't, when you would have certified that you had implemented the requirements of Title III of HAVA? And I don't expect you to answer right now, but once we determine, if in fact, these are 251 funds, I think we're going to want an explanation of why the certification wasn't made.

MR. TRIMPA:

If I understand your question correctly, Madam Chair, there are really two questions. One is, the activities are different in terms of what you can use 251 funds for. And then there's a question that, if you would have certified, when would that have happened and then why didn't you?

CHAIR RODRIGUEZ:

Right. And points have been made all along, my one year here now at the EAC, that there are transitions. There's a Secretary of State in office one year and then there's an election and then there's a new Secretary of State. And so, we are aware of those kinds of transitions, just so you know. And it seems to me that, I may not be alone in this, but sometimes things get lost in the breach. Activities are fulfilled, that kind of thing, and so we're aware of that.

I'm going to say that we -- Mr. Trimpa and I probably are now in sort of an ex parte kind of relationship. We don't have a quasi-judicial or anything, to call this process, but I'll just disclose that we will be discussing this off of the record and ask, again, is there anything you want to add to this conversation? Or have we concluded?

COMMISSIONER DAVIDSON:

Well, I agree with the Chair. I would like to add that I think we all know that, and I know that Mr. Trimpa ethics has been always very high, that we would not be disclosing or discussing anything off the record. So...

CHAIR RODRIGUEZ:

Thank you. Any further discussion? Thank you very much for your time, for your willingness.

MR. TRIMPA:

Actually, Madam Chair...

CHAIR RODRIGUEZ:

Oh, would you like to add something?

MR. TRIMPA:

...I still think there's some confusion, as to timeline. And this gets back to Commissioner Hillman's question, because it's a question on our end, because I think it would be a lot better, so we all know when we leave, as to, I think it would be helpful if we pick a time for when additional submissions come in from the State of Iowa, basically explaining what we know today, when there would be maybe a response or questions from the Commission or Commission staff.

COMMISSIONER HILLMAN:

Do I...

MR. TRIMPA:

Or maybe we could do this off line and come to an agreement, but I'm just worried. I don't want to walk out of here, when we don't know, is there a 60-day clock running? When am I supposed to

send you something, you know? Are there rules that, you know, that apply for what I submit to you, like, in terms of page limits? I don't mean to get technical, but...

COMMISSIONER HILLMAN:

As a follow-up to that, do I understand, Mr. Gilmour, that the 60-day period could begin when the Commission receives additional information?

DEPUTY GENERAL COUNSEL GILMOUR:

That's correct.

COMMISSIONER HILLMAN:

Okay.

DEPUTY GENERAL COUNSEL GILMOUR:

The term it uses is requests.

COMMISSIONER HILLMAN:

Requests?

DEPUTY GENERAL COUNSEL GILMOUR:

Yes.

COMMISSIONER HILLMAN:

When we request or when we receive? Welcome to our world.

DEPUTY GENERAL COUNSEL GILMOUR:

Requested.

VICE-CHAIR HUNTER:

Can you read the relevant portion?

DEPUTY GENERAL COUNSEL GILMOUR:

Yes, it says, "The appeal authority shall render a decision on the appeal, no later than 60 days following receipt of the appeal, or in

the case where additional information is needed and requested, 60 days from the date that information is received.”

COMMISSIONER HILLMAN:

Received, okay.

DEPUTY GENERAL COUNSEL GILMOUR:

Received and audited...

COMMISSIONER HILLMAN:

All right.

DEPUTY GENERAL COUNSEL GILMOUR:

...from the audit and/or management .

COMMISSIONER HILLMAN:

So, if I understand your question, it's how much time do you have to submit the information that's been -- the additional information that's been requested and discussed today?

MR. TRIMPA:

Right. And in addition to that, it may be helpful that, if we know there are questions you have now, that maybe we could address, at least that first round, in this first submission or we could at least set up a timeline if we submit by "X" date, you submit questions, those questions may come before we submit or not, and then we do a final submission, to kind of wrap it up and then the clock starts ticking and you make a decision.

CHAIR RODRIGUEZ:

Is it fair to say that the questions may be different if it's a 101 expenditure versus a 251?

MR. TRIMPA:

That's a dispositive question.

CHAIR RODRIGUEZ:

We have to resolve that. We have to resolve that on our side, first.

Mr. Gilmour?

DEPUTY GENERAL COUNSEL GILMOUR:

Well, Commissioner, if I may propose, I mean ultimately, they're the one who spend the money, so information we received ultimately on the question, was from them. And, yes, I do agree, we also need to resolve, for our records, to be able to show that the conclusion previously made, was proper.

Perhaps, the first way to start, would be to request, right now, to start, at least the first 60-day clock, would be to request sort of a specific appeal-- specifically, do each issue. Like, if you have specific expenditures that are being claimed not to be, fall under the HAVA requirements, that you believe are and you can identify those specific things, assign the dollar value and provide us very specific responses, including, for example, to the 251 funds, the inclusion standing, is that it was 251 funds. That's the final decision presently out there. For example, if you're saying that your information suggests that it's incorrect and you're going to dispute that, you could provide that information. And that way, we're all -- then you give the response and then if we have questions on that, we can ask those questions, all concentrated on one specific frame of an appeal. They can then issue additional questions, if determined that they have some. And again, you'd have -- we'd have another 60 days, once that information has been received. It's a proposed -- that's one way to start the process off with a clear vehicle from this point.

MR. TRIMPA:

So, making sure I understand you correctly, Counsel and Madam Chair, is, we present something, our argument, as to why we think it's 101 or 251. And then, I guess, we can argue in the alternative, if it's -- obviously if it's 101, our argument is a lot easier. If it's 251, admittedly it's quite difficult. Then that, following analysis, could, on dividing out the money and the type of activity, apply to either one. I see what you're saying.

DEPUTY GENERAL COUNSEL GILMOUR:

Right.

MR. TRIMPA:

We just have to have a timeline for it, just so I can go back and tell my client.

DEPUTY GENERAL COUNSEL GILMOUR:

And this is a proposal. I'm not speaking, obviously, for the Commission.

CHAIR RODRIGUEZ:

Okay.

DEPUTY GENERAL COUNSEL GILMOUR:

But the idea would be, you look at each expenditure, all right, and if you want to propose that a particular expenditure, for example, you want to argue, as you have presumably did, that you provided some information, specific on HAVA, in paper form and you want to say, you know, a certain dollar amount here was spent exclusively on educating people for HAVA purposes...

MR. TRIMPA:

Right.

COUNSEL GIMOUR:

...you present the documentation, the expenditure, and say, we challenge, this portion. You do that for the various expenditures that you believe are improperly determined in the final decision and we go sort of step by step. Then, it's broken down, based upon what specifically you're challenging. So, we have a final decision. What are you challenging about the final decision? This gives them the opportunity, with specificity, to ask you additional questions...

MR. TRIMPA:

Right.

DEPUTY GENERAL COUNSEL GILMOUR:

...that they might have. And it would be 60 days from the receipt of that new information, based upon what we just read.

VICE-CHAIR HUNTER:

So, I think we are hereby requesting more information. Should we make a motion on that?

CHAIR RODRIGUEZ:

Do we need a motion?

VICE-CHAIR HUNTER:

Do we need to do that?

DEPUTY GENERAL COUNSEL GILMOUR:

You certainly can.

CHAIR RODRIGUEZ:

Okay, let's make a motion then. Vice-Chair Hunter.

VICE-CHAIR HUNTER:

I move that we request more information of the State of Iowa, regarding this audit appeal and we give the State -- since there's no

procedure on the timeframe for that -- we hereby give the State 30 days to respond to this request for information.

CHAIR RODRIGUEZ:

Is there a second?

COMMISSIONER HILLMAN:

I'll second the motion, but I have a question.

CHAIR RODRIGUEZ:

Sure. Discussion.

COMMISSIONER HILLMAN:

Well, I'm seconding something on good faith here. What are the questions, what's captured in the transcript of today? Is that what we're talking about? Because I don't mind making the motion. I'd like to know, though, what the questions are. And if it's what we've said and can be extracted from the transcript, then the 30 days may have to begin when we get the transcript, so they can know specifically, whether they've understood the full questions. Do you follow me? If it takes us a week or two to get the transcript, then if we want to give them 30 days, it has to be from when they receive...

CHAIR RODRIGUEZ:

When we make the transcript available.

COMMISSIONER HILLMAN:

Right.

VICE-CHAIR HUNTER:

But I would like to say that it's whatever they care to provide, whether or not it was a question before us today, because I don't

want them to be constrained to specifically what was asked on the record.

COMMISSIONER HILLMAN:

Oh no, but we're asking additional questions and I think the only way they can remember which of the many questions we asked was, if they can see a list from us. So that's all. Okay, fine.

CHAIR RODRIGUEZ:

Mr. Gilmour.

DEPUTY GENERAL COUNSEL GILMOUR:

And also, we can also begin with the fundamental concept of providing specific information and evidence on the original appeal. That was the mindset. We can ask the specific questions even later, but the idea is, as we had talked about, the appeal is usually very broad language and very broad concepts, basically saying in general terms, we believe elements of this did fall under the area of education. And I guess, we can say, please provide specific transactional information and evidence to support your appeal, because I think, that's what we're all missing here, in part, is specific information to support your appeal. That's what we don't have. Are you challenging a specific part of the final decision? Give us specific information. So maybe, the first step, to make it simple and to begin the process, so we can move towards resolution, is simply say, please -- we're giving you additional time, 30 days I believe, Commissioner Hunter said, to provide additional specific information to support your appeal.

CHAIR RODRIGUEZ:

And Commissioner Hillman suggested starting that clock when the transcript of the meeting is available.

COMMISSIONER HILLMAN:

Well...

CHAIR RODRIGUEZ:

Or are you willing to go with this?

COMMISSIONER HILLMAN:

No, I'm willing to accept that with the understanding that the questions that come out of the transcript may be in addition to what information would come to us.

DEPUTY GENERAL COUNSEL GILMOUR:

The EAC could ask additional questions as it sees fit...

COMMISSIONER HILLMAN:

Okay.

DEPUTY GENERAL COUNSEL GILMOUR:

...so that could be the next step as well.

COMMISSIONER HILLMAN:

All right, fine.

CHAIR RODRIGUEZ:

So the motion is...

VICE-CHAIR HUNTER:

The motion is that the Commission hereby requests additional information from the State of Iowa -- and I don't want to say specific, because I think, however they want to respond to, whether it's a specific issue or not -- additional information from the State of Iowa within 30 days.

CHAIR RODRIGUEZ:

But we do want Gavin's...

VICE-CHAIR HUNTER:

Yes.

COMMISSIONER HILLMAN:

Right.

CHAIR RODRIGUEZ:

...points covered. Is that agreeable? Are we ready to vote? All those in favor of seeking additional information from the State of Iowa indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

So have we been crystal clear so far?

MR. TRIMPA:

That's fine, Madam Chair, we're good.

CHAIR RODRIGUEZ:

Okay. And I know that a lot of States are watching the EAC, in how we handle this. I see a representative from the National Association of Secretaries of State here. We're cognizant of that interest.

Thank you again for traveling. I thank the representative from the current Secretary of State's Office. And we look forward to resolving this, so that everybody can get it off of their plates.

Are there anything to add from the Commissioners before we adjourn?

COMMISSIONER HILLMAN:

Madam Chair, I do.

CHAIR RODRIGUEZ:

Yes.

COMMISSIONER HILLMAN:

I do have something.

CHAIR RODRIGUEZ:

Yes, Commissioner Hillman.

COMMISSIONER HILLMAN:

I have a written statement that I'm going to ask be entered into the record, and I'll just share with you all, both copies of the statement and the gist of what it is.

As was mentioned earlier, on April 16, a policy was established concerning how requests for advisory opinions would be issued, on the use of HAVA funds. And I was the one Commissioner voting in opposition to the policy and so my statement explains why. And I want to say from the outset, that I support the goals of the policy, which were basically, to require Commission involvement in the issuance of advisory opinions regarding the use of HAVA funds and to establish accompanying internal procedures that are very specific and firm, so that we move efficiently and expeditiously.

I did have concerns. One overarching concern was that, I felt there was an unnecessary rush to adopt the policy without full consideration. And my other concern was, that the policy invites local units of government to make requests directly of EAC, for advisory opinions and thus being able to bypass the States, and it is the States that give the local units the HAVA funds. And so, I felt that EAC was, sort of overstepping its own boundaries, if you will, in that respect. And so, I just am issuing a statement clarifying that.

And the second part of my statement is just explaining, going back to the March meeting, why I had reversed my position, with respect to considering State-by-State requests for updates on the motor voter form. And so, I will pass this down and ask Mr. Wilkey if you would give the extra copy to the gentleman, so he can have it for the record.

CHAIR RODRIGUEZ:

Thank you. And several other things were entered into the record. Mr. Trimpa had some documents, which we have, Mr. Trimpa. We received a letter from Congressman Gonzales and late last night, a submission from a number of groups. So, those all will be entered into the record, and if I've missed anything, please let me know.

Let's see, our next meeting is May 22nd. It will be in Washington. And I, again, appreciate everyone coming to the meeting today, accommodating sort of a special meeting request and look forward to resolving this and all of our other issues.

Is there a motion to adjourn?

VICE-CHAIR HUNTER:

So moved.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

All those in favor? Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay, thank you. We're adjourned.

[Whereupon, the public meeting of the Election Assistance Commission concluded at 12:42 p.m.]