

**Draft testimony of John Lindback
Elections Director, Oregon Secretary of State's Office
US Elections Assistance Commission Hearing, April 26, 2005**

Thank you, Chair Hillman, and members of the commission for inviting me to testify today on the important subject of the EAC's proposed voluntary guidance on implementation of statewide voter registration databases. I am John Lindback, director of elections in Oregon, and I am pleased to report that my state has been hard at work on our new Oregon Centralized Voter Registration System for more than two years. Yes, we expect to comply with HAVA's deadline of January 1, 2006.

In the beginning, we debated with one another over our approach to this very large and difficult project. We studied the sentences in HAVA that require each state to define, build and maintain a statewide voter registration list that is single, uniform, official, centralized, interactive and computerized. We talked to the Congressional staff who wrote those words. The intent seemed so clear: a single statewide list and no more county lists. The state would be responsible for that one big list of voters. And we were supposed to eliminate the potential for individuals to register and vote in more than one county.

We kept in mind the phrase used by members of Congress when they said HAVA was designed to make it easier to vote and harder to cheat. The Oregon Centralized Voter Registration System will be a single system, complete with elections management functions, delivered in real time to each of our 36 counties. We designed our system so that someone could update their registration right up to the 8 p.m. deadline on election day and be issued a ballot – that's the making it easier to vote part. We also designed our system so that the county election worker, through access to instant duplicate checks, will know immediately whether that voter had already been issued a ballot in another county – that's the part where we make it harder to cheat.

Recently, I was invited along with other members of the EAC Standards Board Executive Committee to act as focus group for the development of the proposed voluntary guidance you have in front of you today. The heart of our discussions focused on the two approaches states have been taking to development of statewide databases. Some states, such as Oregon, Wyoming, Maryland, Colorado and others, are building one voter registration system for use by all local jurisdictions, dispensing with the old system of separate county databases. These states, citing HAVA, have tackled a difficult job that involved achieving local "buy-in" and coping with inevitable conflict over turf and responsibilities. Some of our counties have resisted this "top-down" approach and we've always pointed to the language in HAVA as proof that we have taken the road to full compliance.

But other states took a different road. They're allowing counties to keep their own county databases. The state then collects on a periodic basis – usually every 24 hours - the voter registration information from each local jurisdiction in order to compile the statewide voter list. The state then makes the statewide list available to each county and

performs duplicate checks and checks the voter information against death records and felon databases. The duplicate checking and the checks against the other databases are not instantaneous features of this so called “bottom up” system. Customarily it takes 24 hours or more to complete the cross-matching functions.

Our focus group was most divided on the issue of whether states that took the bottom-up approach, allowing local jurisdictions to continue to maintain and work off of their own databases while the state maintains a separate “official” voter registration list, are truly compliant. Some members of our group expressed very strong feelings that the words in HAVA were specifically written to exclude that kind of approach. Other members argued that their “bottom-up” systems comply with the words and goals of HAVA. The main difference between the two kinds of systems is that there is a 24-hour, or more, lag between data entry of voter registration information and the cross-matching of the records against the rest of the voters in the system and the felon and death record databases. Indeed, I believe these states may have trouble if challenged proving that they have provided a truly interactive list, as HAVA requires.

Regardless of how individuals came down on that issue, there was general agreement that the timing of the proposed voluntary guidance was affecting what kind of advice could be given. Because it took so long for your commission to be appointed and to get money to operate, this voluntary guidance is a year behind schedule. Most of the states couldn’t wait for this guidance in order to start and finish their projects on time. Thus, they had to interpret HAVA the best they could and get going with their projects. Great concern was addressed in our focus group over the fact that the “train has left the station” for the states. EAC guidance that would call into question the compliance of the “bottom-up” systems this late in the process would be viewed as unfair and untimely to those states. Such a warning should have been issued by the EAC long ago.

Thus, the proposed guidance in front of you provides a mild blessing of these “bottom-up” systems. The proposed guidance on page 6 states that the top-down approach is most closely akin to the requirements of HAVA but the bottom-up systems “may also meet the single, uniform list requirement....” There is no question as to whether this guidance is politically correct. It meets the goal of doing no harm to those states that have chosen this path. The question before you now is whether this advice is legally correct. If the EAC believes that there is a chance that states that took the “bottom-up” approach could lose a court challenge, it would be beneficial now to those states to explicitly say so as part of your voluntary guidance. If states have chosen a path that “skirts the edge” of compliance, then the EAC should consider saying so in more explicit language.

I believe that Oregon made the correct choice by going with a top-down system. I would have a lot more sleepless nights worrying about the outcome of litigation had we taken the bottom-up road. Frankly, we don’t think the EAC should encourage states to take the bottom-up approach. The 24-hour lag time involved with bottom-up systems doesn’t truly achieve the goals of creating single systems with instant access to information for elections officials. The 24-hour lag time will become more and more important – and more and more of a problem – as election day draws near. On the very day when this

information is most important – election day – the bottom-up system will not serve as the truly real-time system that would be most useful.

We understand the difficult situation you're in because the guidance before you is not timely. The timing of this draft guidance and today's hearing has no affect, however, on the intent of the law or the language of the law. Clearly, top-down systems were the vision and are the best technology available to achieve the goals of HAVA.

I'd like to address one more issue today – one that I failed to bring up during our focus group discussions two weeks ago. The guidance uses the phrase “voter registration information” in sections 5, 6, 8 and 11. The draft guidance has raised some questions in Oregon as to the definition of the term. Is there a minimum amount of information that each state system should provide on each voter for the benefit of all local elections officials and the voters themselves?

We believe the guidance ought to answer the question that it “begs” by the repeated use of the phrase. What constitutes “election registration information?” For example, it would be very useful for elections officials to know whether an individual voter has already been issued a ballot under a state's absentee or early voting processes. Should that not be included in the voter registration information? It would be beneficial to meeting the goal of “making it harder to cheat” as election day draws closer and closer and opportunities arise for double-voting.

We also believe the repeated use of the term “expedited basis” in sections 6 and 8 also begs the question of a definition of that term. We don't, however, encourage you to try and define that because it could create serious problems for local jurisdictions. A clear cut requirement that voter registration data entry occur within in a tight timeframe could cause serious problems for some local jurisdictions who may not have the money or resources to always meet that tight timeframe. The experience in the 2004 election was an eye-opener for many elections officials – massive numbers of voter registration cards flowing into elections officials at the last minute. The pressure on local elections officers was enormous. Fortunately, our Oregon counties got the job done but we were very worried. A deadline set arbitrarily, however, will doom at least some local jurisdictions to failure because, as we all know, not all local jurisdictions are created equal in terms of money and resources.

This concludes my comments, Mr. Chairman, and I hope that you find them helpful. Our goal is not to create problems but to assist you in helping the states avoid them.

We appreciate your openness and the thoughtful manner in which the EAC has been approaching this set of guidelines. We also truly appreciate your inclusion of elections officials in creation of the draft guidance. Thank you once again for the invitation to tell you what we think.

