

**Minutes of the Public Meeting  
and Hearing**

**United States Election Assistance Commission**

**Military and Overseas Citizens: Counting Their Votes – Part I**

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Held on May 19, 2009

VERBATIM TRANSCRIPT

The following are the Minutes of the Public Meeting and Hearing of the United States Election Assistance Commission (“EAC”) held on Tuesday, May 19, 2009. The meeting convened at 1:00 p.m. EDT. The meeting was adjourned at 3:26 p.m., EDT.

### **PUBLIC MEETING**

CHAIR BEACH:

This meeting of the United States Election Assistance Commission will now come to order. I want to make a few announcements before we begin. If everybody would please turn off your cell phones, pagers or any other electronic devices to avoid any disruption. First, we will conduct the business portion of our meeting, and then we will take a short break and reconvene to have the hearing portion of today’s public meeting, which is titled “Military and Overseas Citizens: Counting Their Votes.” This will be the first of the two series of hearings that we will be having this year.

So now I invite you all to stand and do the Pledge of Allegiance.

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[Chair Gineen Bresso Beach led all present in the recitation of the Pledge of Allegiance.]

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CHAIR BEACH:

Deputy General Counsel, could we have a roll call please?

DEPUTY GENERAL COUNSEL GILMOUR:

Certainly. Commissioners, please respond verbally when I call your name.

Chair Gineen Beach.

CHAIR BEACH:

Present.

DEPUTY GENERAL COUNSEL GILMOUR:

Vice-Chair Gracia Hillman.

VICE-CHAIR HILLMAN:

Here.

DEPUTY GENERAL COUNSEL GILMOUR:

And Commissioner Donetta Davidson.

COMMISSIONER DAVIDSON:

Present.

DEPUTY GENERAL COUNSEL GILMOUR:

Everyone is present.

CHAIR BEACH:

Okay, great, thank you. Okay, now we will move to the adoption of today's agenda. I'll ask my fellow Commissioners, do we have any changes or questions to the agenda?

COMMISSIONER DAVIDSON:

I move approval of the agenda.

VICE-CHAIR HILLMAN:

Second.

CHAIR BEACH:

Okay. All in favor say aye.

[The motion carried unanimously.]

CHAIR BEACH:

The agenda is adopted. I want to thank everybody for joining us today. As I indicated, we're going to start the public meeting with the business portion of EAC. I'll note, before we

begin, that we had a meeting in Denver, Colorado, last month on tax day to talk about cost savings of effective election administration management, and hearing how different jurisdictions have handled election administration on reduced budgets, I believe, will be beneficial to election officials across the nation. And I encourage all of you who are watching to go back and watch our public meeting from April, because there are certainly some good ideas, I believe, and you can look to see if there are practices that you can implement in your own jurisdiction.

Before we begin, are there any opening remarks from the Vice-Chair or Commissioner Davidson at this time?

VICE-CHAIR HILLMAN:

No.

COMMISSIONER DAVIDSON:

No.

CHAIR BEACH:

Moving to our agenda, the first item, under Old Business, is the correction and approval of the minutes from the March 17<sup>th</sup> hearing. During our public meeting in April, Vice-Chair Hillman requested that we table the minutes from our last hearing and amend them to incorporate the question and comment period following the presentation by the panelists' testimony from our hearing on voter registration databases. And before us we have now the corrections to that portion of the minutes. At this time are there any questions or changes to that portion of the minutes from the March 17<sup>th</sup> meeting?

VICE-CHAIR HILLMAN:

Move adoption.

COMMISSIONER DAVIDSON:

Second.

CHAIR BEACH:

Okay, all in favor say aye.

[The motion carried unanimously.]

CHAIR BEACH:

Okay, the minutes are adopted. The next item of business is we have the correction and approval of the minutes from the April 15<sup>th</sup> meeting and workshop in Denver, Colorado. Are there any changes to these minutes before us?

COMMISSIONER DAVIDSON:

Now, do you want two motions on these like we did once before, with it being divided, the workshop being separate from the minutes of the public meeting of business?

CHAIR BEACH:

I don't believe so, because in the March meeting we did Adjourn, and then reconvene for a separate hearing. When we conducted the workshop in Denver, Colorado, we just took a minor break, so -- we came back and did not officially adjourn, so they will be incorporated into one minutes.

COMMISSIONER DAVIDSON:

Very good. I move approval of the minutes of the meeting in Denver that was held April 15, 2009.

VICE-CHAIR HILLMAN:

I'll second it, but I do have a question. The minutes are presented differently, and I think at some point we'll get down to a

format, but the March minutes are all one. And so, it's fine with me to approve the two sets together as one, but the way they're presented, they do like two separate sets of minutes.

CHAIR BEACH:

From the April meeting...

VICE-CHAIR HILLMAN:

Right.

CHAIR BEACH:

...you're talking?

VICE-CHAIR HILLMAN:

Right, right.

CHAIR BEACH:

Okay.

VICE-CHAIR HILLMAN:

Because if you look at page...

COMMISSIONER DAVIDSON:

We've renumbered the page.

VICE-CHAIR HILLMAN:

Well, yes, because the meeting just goes right into the panel and it's not, you know, they are not segregated out.

CHAIR BEACH:

Like they were in the March meeting.

VICE-CHAIR HILLMAN:

Right, right. So, maybe Counsel if you have any advice, as to because of the presentation of these two things, are we safe adopting them as one?

DEPUTY GENERAL COUNSEL GILMOUR:

As long as we make it clear in the vote what we're doing, that's the important thing. I mean, you're saying that there's -- my copy has a green piece of paper and the numbering starts all over, if that's what you're referencing.

VICE-CHAIR HILLMAN:

All over again, right. And it says that the workshop...

CHAIR BEACH:

Right.

VICE-CHAIR HILLMAN:

...Convened at 2:49 and adjourned, so it makes it look like two separate sessions.

CHAIR BEACH:

Right.

COMMISSIONER DAVIDSON:

Maybe, I should clarify my motion to say that I would move to approve the minutes of our business meeting and also the minutes that we held with the cost savings practices, the workshop for election management, and that way it clarifies that we're approving both sets.

VICE-CHAIR HILLMAN:

As one.

COMMISSIONER DAVIDSON:

As one.

VICE-CHAIR HILLMAN:

Okay, that's good.

CHAIR BEACH:

So, are you moving to adopt the minutes?

COMMISSIONER DAVIDSON:

Yes.

CHAIR BEACH:

Okay, all in favor?

[The motion carried unanimously.]

CHAIR BEACH:

Okay, the minutes are approved. The next item on the agenda under Old Business is the report of the Executive Director, Mr. Thomas Wilkey.

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madame Chair. I want to welcome everyone to this month's meeting. It's been a busy few weeks at the EAC. As you may know, we have restructured some of our divisions to improve our operations and we've already seen positive results from it, which I'll discuss in one moment. The primary structural changes include: establishing a dedicated finance division that administers all grants, including requirements payments, and oversees compliance with federal reporting requirements and manages internal controls; transforming our research program into a broader division that will issue guidance on the National Voter Registration Act, develop election management guidelines, and create language accessibility resources; and last, but certainly not least, expanding our voting systems division, doubling our staff to build our capacity for advancing voting systems through the testing and certification process.

Under Grants, among the first improvements of this restructuring is a more streamlined process for obtaining

requirements payments. The 2008 and 2009 HAVA funds will be consolidated, so states can apply for both funds with one state plan. We're developing guidance for states on this process, and will issue it soon. Between the '08 and '09 funds we have approximately 195 million left to disburse. We've disbursed 20 million so far, including \$575, 000, each, to the States of Montana, Idaho, Wyoming, North Dakota, Rhode Island, and South Dakota; 1.17 million to Iowa; 1.37 million to Oregon; 1.36 million to Oklahoma; 1.36 million to Connecticut; 1.92 million to Minnesota; 1.7 mill to Colorado; 3.17 mill to Georgia and 4.92 million to Pennsylvania. In other grant news, we'll be announcing our HAVA college poll worker and mock election grants later this month. And, Madame Chair, I know that we're anticipating some questions regarding some of these grant programs, so I've asked our new Director of Grants, Dr. Mark Abbott, to join me at the end of my report, so that he can update you on several activities in that division, since they are new.

Under Voting System Testing and Certification, we've hired two full-time computer engineers with expertise in voting systems. They will speed up the testing process by providing technical guidance and assistance to vendors and election officials. We expect two additional voting systems, the ES&S Unity 3.2 and Premiere Assure 1.2 to complete the test process soon. And we are getting feedback, I might add, almost on a daily basis, a report, from our labs, at least weekly, if not every other day, as to where they are in this process. We also approved the Sequoia WinEDS 4.0 test plan version 3.0. We recently issued two Notices of

Clarification on the laboratory independence requirement, and on the development and submission of test plans. We also posted correspondence between EAC and iBeta, a federally-accredited test lab, regarding the reuse of testing for ES&S Unity 3.2. In addition, we recently registered a new voting system manufacturer, Scytl Secure Electronic Voting S.A. By registering, Scytl is now eligible to submit voting systems for federal testing and certification. This brings the total number of vendors registered in our certification program to 12. And finally, last week we held a virtual public forum where the EAC Board of Advisors commented on the first report of the Election Operations Assessment project. The goal of this project is to create tools that help the EAC evaluate the security risks associated with various types of voting systems, and inform the development of future iterations of the Voluntary Voting System Guidelines. You can view the comments and the report on our website.

Under Research, the 2008 Election Day Survey is scheduled for release in the fall of this year, 2009. We are pleased to report that all states responded to this year's, compared with 96 percent in 2006 and 93 percent in 2004. Responses are more complete than in previous years. The Election Data Collection Grant report will be released June 30<sup>th</sup>. This grant was issued last year and provided 10 million to five states to establish methods for gathering Election Day data. The report will include lessons learned and best practices that can be replicated by other states. We will also be releasing the National Voter Registration Act report on June 30<sup>th</sup>

and both of these reports will be presented to the Commissioners at their June meeting for review and approval.

Under EAC Operations, we have submitted our Fiscal Year 2010 budget request to Congress and have posted that on our website.

And as I previously indicated, Madame Chair, with your approval, and the Commissioners, I would like to have Dr. Abbott just come up and give a short briefing on some of the grant issues.

CHAIR BEACH:

That's fine with me.

DR. ABBOTT:

Thank you, Mr. Wilkey. Thank you, Madame Chair, just a couple of brief remarks on the student mock election competition, and the poll worker competition for this year. We have \$300,000 available for the mock election grants and \$750,000 available for the poll workers. This year, for the poll workers -- the guidance for both of these will be coming out in the next month. The mock election one should be out within the next few days. This year, because it's the 2009 year, we're going to use the money in such a way that we can have activities going through the 2009 election, but also the 2010 elections, so that we have a series of grants already in the pipeline and already working towards the goals that they put in their applications.

For the poll workers, we're especially looking at encouraging applicants from historically black and Hispanic institutions of higher education, as well as programs that can propose partnerships with Offices of Disability at the universities, so that we can find and

support poll workers that have disabilities, but also develop material and training activities and exercises for other poll worker programs, so that we can be more inclusive in who is a poll worker, and thus more welcoming to folks with disabilities when they come to the polling place.

Like I said, if there are any questions I can take questions or I can leave it at that.

CHAIR BEACH:

Okay. Well, I know I have some questions, but I will defer to Vice-Chair Hillman if you want to proceed with any questions for our Executive Director or Dr. Abbott.

VICE-CHAIR HILLMAN:

Just for clarification, the mock election is \$300,000 and the college poll worker is \$750,000?

DR. ABBOTT:

That is correct.

VICE-CHAIR HILLMAN:

Okay. So, is it envisioned that the full amount will be granted out under the upcoming RFPs...

DR. ABBOTT:

Yes, it is.

VICE-CHAIR HILLMAN:

...or are we going to do it in sections?

DR. ABBOTT:

No, we'll grant out the full amount. The difference between this year and last year is that we're proposing a 24-month period of time to spend those funds. So, the grants will be a little larger than

they were last year, which means a slightly fewer number of grants. That way they will have funds to operate this year, but also next year through the election. If we get money next year, we can use that money to supplement some of these grants to expand their activities, but also run a new competition, so that we have yet another group of grantees for the 2010 election.

VICE-CHAIR HILLMAN:

And then, my follow-up question, Mr. Executive Director, would go to the budget submission for 2010. What is that total amount of money? And are there any funds in there requested for either or both of these two programs?

EXECUTIVE DIRECTOR WILKEY:

Not in the 2010. We will, again, for the 2011, request them through OMB, but our present budget that went to Congress does not include that grant money.

VICE-CHAIR HILLMAN:

And what is that total budget submission request? Is it 16, 17?

EXECUTIVE DIRECTOR WILKEY:

It's 16.8 I believe. Yes 16.8, I believe.

VICE-CHAIR HILLMAN:

16.8 million?

EXECUTIVE DIRECTOR WILKEY:

That's correct.

VICE-CHAIR HILLMAN:

Okay.

EXECUTIVE DIRECTOR WILKEY:

And that includes the transfer money to NIST for the VVSG work.

VICE-CHAIR HILLMAN:

Thank you. I have other questions for the Executive Director but not for Dr. Abbott.

CHAIR BEACH:

Okay, well, we'll do our first round with Dr. Abbott.

Commissioner?

COMMISSIONER DAVIDSON:

Just to clarify, and I like the idea of the two years, because I feel that will give the grantees time to really prepare to put, you know, their plan into place, and really, to prepare it and then, obviously, to be more successful, I guess, in the year prior -- or the year of the election with their goals that they would like to meet. Is that kind of the way you were looking at it, as you were looking into doing a two-year? I know other grants throughout government do two-year programs, and I just want to -- because this is new for us.

DR. ABBOTT:

Right, that's exactly right. We realize that we got the funds late this year, because the appropriation came late in the fiscal year. By the time we get the money in the hands of the grantees, there may only be a month or so before the '09 election. So, we wrote the guidance, such that, as they apply they'll be planning to do, maybe, a small program this year, or some planning this year, running up to the election, and then most of their activities taking place for the 2010 election. So, they'll have the funding and the

time to develop the partnerships they need at the local level to make these programs a success.

COMMISSIONER DAVIDSON:

And I think it helps the public know that in some states -- all of our states are different in their laws, obviously, and their primaries are held, some of them already being held, being held here shortly, and then many of them are not held until next year in the 2010 year. So, obviously, that would be helpful to have it before the election and be ready to move forward. So, I did like that. I think that's a wise idea, and it gives us ability to test it to see how well it works before a Presidential primary and Presidential year.

DR. ABBOTT:

That's right. And for those programs that do exceptionally well in their first year, and they come back and ask for additional funds to expand their activities, we can look and see how successful they were, and make determinations as to whether or not we will make additional investments in those particular grants for 2010.

COMMISSIONER DAVIDSON:

Very good. Thank you.

CHAIR BEACH:

I just have a couple of questions just for clarification. With the mock election grant program this year, is there anything different, as far as criteria, that EAC will be looking at in determining or awarding grants to these recipients? Or was there anything in appropriations language that would determine that?

DR. ABBOTT:

We followed the -- we, basically, followed the type of activities that was in the last competition, so there's nothing new in terms of the activities that we're funding.

In terms of the selection criteria for these grants, we went ahead and pared it back, slightly, over what we had put in the last year's announcement. Mostly, we did that out of a desire to streamline the process and make it easier for grantees to see very clearly what it is that we're looking for in terms of past performance, organizational capacity and budget effectiveness. So, there are some slight differences -- there are differences there that you would know.

The other difference this year is that we're proposing that while you don't need matching funds or local funds for these programs to apply, if you have them we would look kindly upon that. Basically, our attempt there is to expand the amount of impact that we can have with the relatively small amount of money that we're giving out by increasing the size and scope of the local projects through matching contributions from the applicants.

CHAIR BEACH:

And this is the first time the EAC would look to use, as a selection criteria, matching funds for a grant program like this, correct?

DR. ABBOTT:

That is correct, and it is a very small step in that direction in that the budget -- the cost effectiveness is only 15 percent of what we look at. This is one-third of that, so it's only a few points in their

favor if they are able to find some non-federal money for their program.

CHAIR BEACH:

Okay. And, in marketing our programs out there and getting, you know, publicizing them, are we using any different mediums or media to get that out there? Are we going to different websites? Are we doing anything differently on that front to advertise?

DR. ABBOTT:

We are -- I can't speak to how much will be different from last year, since I wasn't here last year, but we are using channels we have at the EAC to broadly distribute the notice. We're using grants.gov hopefully effectively this year. We've also tapped into a lot of college-based networks that might not be traditional stakeholders of the EAC, so we may not know of them here, but they do run civic service programs and volunteer programs on universities; Campus Compact, for example, League of Women Voters, who we have a relationship with. But there are many, many more places than we've actually had grants with, and we're reaching out to those types of groups in an effort to get more applications in.

CHAIR BEACH:

Okay, thank you.

VICE-CHAIR HILLMAN:

I have one follow-up question. Do I understand correctly that these grants funds can be used for activities in non-federal elections?

DR. ABBOTT:

The appropriations law that authorizes these activities did not specify whether they had to be federal or non-federal elections. They said for use in '09 elections, so we have interpreted that broadly.

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

Thank you.

DR. ABBOTT:

Thank you. Thank you, Madame Chair.

CHAIR BEACH:

Okay, I'll go to the Vice-Chair, if you have questions for our Executive Director.

VICE-CHAIR HILLMAN:

I do.

EXECUTIVE DIRECTOR WILKEY:

Okay.

VICE-CHAIR HILLMAN:

National Voter Registration Act, can you update us as to where we are in the process of receiving the transfer of the regs from the FEC? And I raise the question because House of Administration, I believe it was, in follow-up questions to our hearing, it was suggested that EAC hadn't finished its work in that regard, but I believe EAC did everything it can possibly do and we're waiting on the Federal Election Commission. Is that correct?

EXECUTIVE DIRECTOR WILKEY:

That's correct. And I know our Counsel's Office, and I can punt to Counsel who is sitting there next to you...

DEPUTY GENERAL COUNSEL GILMOUR:

Certainly.

EXECUTIVE DIRECTOR WILKEY:

...has been in touch with them on a number of occasions to see where they are. Now, we realize that the FEC had a backlog of a number of things when their Commission was not able to function for some period of time, and they're catching up on that backlog. But, we have periodically touched base with them, because we would really like to do this. Just so you are aware, I have instructed staff to begin the process, even in advance of us getting those regs, to take a look at the present regs as they are now constituted and start looking at them, so that when we do receive them we can be prepared to move forward as quickly as possible. But if you want to follow-up Counsel.

DEPUTY GENERAL COUNSEL GILMOUR:

Let me talk on both those subjects. First of all, you're correct, almost a year ago, July -- early July, we sent over the draft of proposed rulemaking. It is my understanding, however, as Tom noted, that they couldn't act on it at that time. Presently, they have a subcommittee on rulemaking, and what they need to do is first get some permission from that subcommittee to begin working with us on amending the draft that we've already created. Okay? So, essentially we've taken every step we can. We created a CFR cite, as you'll recall, you all voted on that, and then we went ahead and we drafted proposed rules, direct final rules for this process. We

met with them, and again, this all happened about a year ago, and that's where it's been sitting. We, very recently, have actually had communication with them saying it has now gone to the subcommittee, and they expect some sort of sign from that subcommittee that can begin negotiating with us towards the end of this month or the beginning of next month. In the meantime, as Tom noted, in fact, I believe yesterday and last week, we have had meetings with the policy division to discuss, you know, moving forward, substantively, giving some guidance and talking about how we could move forward on NVRA issues, notwithstanding waiting for the FEC. Just sort of initial, you know, "Here's the steps we should expect in this process," everything from, you know, emergency paperwork activities, which we've worked with OMB on already. We are doing everything we can to be ready to go, and even talking about alternatives as well. So...

VICE-CHAIR HILLMAN:

Okay, I would just appreciate being kept up-to-date as we make progress. It sounds like we are finally making some progress. So...

EXECUTIVE DIRECTOR WILKEY:

Yes. And certainly we would like to try to advance this, as Counsel indicated, and get as much as we can, and then be ready to move when those finally get transferred over here, because, as you know, the OMB process takes up a lot of time. And we need to go through it, it's a requirement. But with the 2010 elections almost around the corner, we want to be as prepared as we can to try to move this quickly.

VICE-CHAIR HILLMAN:

A little self-criticism, moving as quickly almost sounds like an oxymoron...

EXECUTIVE DIRECTOR WILKEY:

Yes.

VICE-CHAIR HILLMAN:

...for some of the things that we have to do. Okay, so then, about the \$20 million we've disbursed so far in requirements payments...

EXECUTIVE DIRECTOR WILKEY:

Um-hum.

VICE-CHAIR HILLMAN:

...is that '08 and/or '09...

EXECUTIVE DIRECTOR WILKEY:

'08.

VICE-CHAIR HILLMAN:

...the 20 million?

EXECUTIVE DIRECTOR WILKEY:

None from '09.

VICE-CHAIR HILLMAN:

Okay. The Election Day Survey, the 100 percent response, is it fair to say even though it wasn't that -- I mean 96 percent versus 100 percent, but is it fair to attribute that to the technical assistance EAC provided to the states throughout the process, or just that the states are used to this now and were able to respond?

EXECUTIVE DIRECTOR WILKEY:

I think the technical assistance helped a lot. And from my understanding in working with staff, there was a lot of outreach. They took a lot of calls, they responded to a lot of requests for information. So, I think that helped a great deal. I think also, as you indicated, having this, now three times already, they're becoming more adjusted to this. Now, that doesn't mean that a state is always able to answer every question, because of the way they do business, because of what their statute says. I think this is one of the reasons why this year we chose to do a statutory overview. And I know it's been difficult for some of our states, but it gave them an opportunity to say, "We don't do things this way. We do things this way, so we are not always able to give the precise answer that you need in your survey." So, that was important to us. I think it's going to be very important to the people who use the survey, who read it, because they'll understand a lot more about what these -- what this data means to each state. And so, that was a big part of this year's survey. And I was particularly pleased that even giving this added addition, this year, that we were able to get the 100 percent. But I think you're absolutely right in saying that I think having our consultants work directly with them to clarify the questions, work them through it made a big difference. So, I would think that we would probably be doing that in the future.

VICE-CHAIR HILLMAN:

And then, just a point of clarification on the Election Data  
Election Grant report.

EXECUTIVE DIRECTOR WILKEY:

Um-hum.

VICE-CHAIR HILLMAN:

The grants that we provided to the five states to establish methods for gathering Election Day data, that's at the precinct level.

Is that correct?

EXECUTIVE DIRECTOR WILKEY:

That's correct.

VICE-CHAIR HILLMAN:

Okay, thank you.

EXECUTIVE DIRECTOR WILKEY:

You're welcome.

COMMISSIONER DAVIDSON:

The only...

CHAIR BEACH:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

Thank you. The only...

EXECUTIVE DIRECTOR WILKEY:

I'm turning this way because I can't hear you.

COMMISSIONER DAVIDSON:

Okay, the only additional question I have is concerning the survey. And we've heard our election officials keep saying, "Leave it alone, the survey. Leave it alone." And I know we worked a great deal with them this year in setting up -- had a couple different regional conferences with them, telephone conferences with each one of the regions, to setting up the survey and how we even formatted it, as well as the wordage and so on. I wonder if that -- I think that they seem to be more satisfied with the survey and that's

the reason why they're saying, "Leave it alone." Do you -- are you getting that feedback or...

EXECUTIVE DIRECTOR WILKEY:

I'm getting that feedback. As you recall, Commissioner, we started on this process last February, really, in doing a complete and a very comprehensive overview of where we intended to go with this survey, before both the National Association of State Election Directors and the National Association of Secretaries of State. We wanted to get that out there, get their feedback. We spent a tremendous amount of time with them this year, not only in doing the technical assistance to them, but we did two sets of phone calls with all 50 states, in which we sought their advice, sought information, wanted their feedback. And so, I think that's resulted in the kind of response that we have, and hopefully, the kind of data that we're going to get this year. And, yes, I think in certainly my discussions with a number of the state folks, they would certainly like us to just stay stable for awhile, because they've now set up their system to do this. And remember that we're dealing with states, now, that have brand new statewide election databases, they had to plug this into being able to get this data, rather than, in some cases, going directly to counties. And so, that from their point of view they would like to try to keep this as stable as we can. Now, I understand that even if we keep this stable, we still have to go through the laborious OMB process, and that takes time. It takes several months to get through that, even if we don't change it. And I've asked staff to, within the next several days, as a matter of fact, to brief you on our recommendations for

how we move forward. But I'm very pleased, you know. This is my second or third survey since I've been here, and I think the results that we're seeing is much better than what we've seen in the past.

COMMISSIONER DAVIDSON:

And my only follow-up is you mentioned the statewide databases that the states have integrated into their states, that HAVA required, and a lot of them you really indicate they are putting it on the system so they can pull it electronically down instead of -- so it's programmed into their systems.

EXECUTIVE DIRECTOR WILKEY:

I think that this is one of their goals, is if we could stay consistent, then they can begin to add that to their systems. Right now, they are having to turn around and go to their counties and say, "We need to get this data." It's a very laborious process on their part. If we can keep this consistent over the next few years, then I think we're going to see more and more adding those features to their database. It's going to make it quicker. It's going to make it more accurate. So, yes, I think their argument is well intended, because, from their point of view, the more stable we can keep this going out the better off we are.

COMMISSIONER DAVIDSON:

You know, I think even if we add something to it if we can leave it as close as what we had it before, obviously, the better off we're going to be.

EXECUTIVE DIRECTOR WILKEY:

That's correct, Commissioner.

COMMISSIONER DAVIDSON:

Okay, thank you.

CHAIR BEACH:

Thank you. I just have two points of clarification, one, under Research. The Election Data Collection Grant, can you just recite the five recipients?

EXECUTIVE DIRECTOR WILKEY:

Uh-hum. Illinois, Ohio, Pennsylvania, Wisconsin and Minnesota.

CHAIR BEACH:

Okay, great. And also, you talked about transforming our research program into a broader division that will issue guidance on the NVRA. You're talking about the voluntary guidance that the Commission...

EXECUTIVE DIRECTOR WILKEY:

That's correct. This will be guidance that will be recommended to the Commissioner's for approval. Some of it is guidance provided for under HAVA. So, that guidance will be in draft given to the Commissioners for your approval. Probably, I would request that it go before a public meeting so that there's an opportunity for everybody to hear what is being proposed, and then ask for your approval.

CHAIR BEACH:

And this is also in consultation with the report that we anticipate from the National Academy of Sciences?

EXECUTIVE DIRECTOR WILKEY:

Absolutely. On the voter registration end, we are certainly waiting for their final report to us because, as we've said all along,

much of that report will hopefully drive the update to our voter registration guidance that we did in, help me Commissioner, six...

VICE-CHAIR HILLMAN:

Long, long time ago.

EXECUTIVE DIRECTOR WILKEY:

Long time ago, it seems like forever. Anyway, it will be an update to the guidance...

COMMISSIONER DAVIDSON:

Was it '06 or was it '05?

EXECUTIVE DIRECTOR WILKEY:

I think it was '05.

VICE-CHAIR HILLMAN:

Yes.

CHAIR BEACH:

And just a follow-up to that, do we have any idea or identified timeframe when we believe the National Academies will have their draft report?

EXECUTIVE DIRECTOR WILKEY:

They have said fall. Now, they still have I believe one more meeting to do. We have not been given an update on when that meeting will occur, but as soon as I know I will be letting the Commissioners know when you can expect that report.

CHAIR BEACH:

Okay.

VICE-CHAIR HILLMAN:

Just a point of clarification. If it is guidance under HAVA, I think we're required to do a public hearing.

EXECUTIVE DIRECTOR WILKEY:

Oh, absolutely.

CHAIR BEACH:

Okay, thank you. Now we're at a point where we've gone on to New Business with our hearing, and I would like to take a short ten minute recess/break and then reconvene, unless you have any closing remarks?

VICE-CHAIR HILLMAN:

Just before we do that, if I can just remind everybody that the EAC Board of Advisors will be meeting in Washington, D.C. June the 2<sup>nd</sup> through the 4<sup>th</sup>, two-and-a-half days. We've given them about as much work as you can possibly jam-pack in two-and-a-half days. So, I don't know if they'll be happy with us or not, but they sure will be engaged while they're here.

CHAIR BEACH:

Okay. Do you have any follow-up remarks, Commissioner Davidson?

COMMISSIONER DAVIDSON:

I don't have anything.

CHAIR BEACH:

Okay.

COMMISSIONER DAVIDSON:

Thank you.

CHAIR BEACH:

Anything else for the good of the order for the business portion?

EXECUTIVE DIRECTOR WILKEY:

No, I'm good. Thank you.

CHAIR BEACH:

General Counsel, anything?

DEPUTY GENERAL COUNSEL GILMOUR:

No.

CHAIR BEACH:

Okay, we'll recess for ten minutes and then reconvene.

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[The Commission recessed at 1:36 p.m., reconvening at 1:46 p.m.]

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### **PUBLIC HEARING**

CHAIR BEACH:

Hi. Now, we are going to be convening our hearing titled "Military and Overseas Citizens: Counting Their Votes." This is Part I. I say Part I, because this is the first of two hearings we'll have about improving customer service for these voters. The second hearing we'll have, which I anticipate this fall, will focus on the results of our UOCAVA survey.

As I stated when I was sworn in as Chair of the EAC, one of my top priorities is working with our stakeholders in finding solutions for these voters who have faced obstacles for years. This past Saturday we celebrated Armed Forces Day and recognized and honored our servicemen and women who serve to protect our nation every day. Ensuring that our men and women serving our nation overseas are able to participate in our elections and successfully cast their ballots is paramount. However, there are surveys, studies and reports that indicate that our overseas voters

are not receiving their absentee ballots in time and are being disenfranchised as a result. Our overseas voters certainly deserve better.

The Federal Government and many interest groups have been analyzing the issues associated with UOCAVA voting and are focused on solutions. Last week, the Senate Rules Committee held a hearing entitled “Problems for Military and Overseas Voters: Why Many Soldiers and their Families Can’t Vote.” The testimony included one soldier’s experience with the voting process while overseas, as well as current practices from the State of Florida, challenges faced by election officials, and what the Department of Defense through the Federal Voting Assistance Program is doing to help military voters. This Thursday, the Committee on House Administration will also be holding a hearing entitled “Military and Overseas Voting: Obstacles and Potential Solutions.” Several members of Congress have also taken leadership on this issue. Senator Cornyn and Congressman McCarthy have reintroduced the Military Voting Protection Act, which is seeking to improve procedures for both collection and delivery of marked ballots for military voters. Congressman Maloney has also introduced the Overseas Voting Practical Amendments Act seeking to remove certain barriers for overseas voters. And Congressman Rush Holt has also introduced legislation seeking improvement for our UOCAVA voters.

EAC has also played an important role by providing all our stakeholders with our UOCAVA data through our research and the HAVA-mandated Election Day Survey. According to EAC’s 2006

Election Day Survey, the largest reason stated by state and local jurisdictions for not counting UOCAVA ballots was that they were returned as undeliverable. From the report released in September of 2007, "Voting From Abroad: A Survey of UOCAVA Voters," overseas civilians voted at much lower rates than military voters and their families. Of those who did not vote, half reported problems with requesting registration and ballot materials, a quarter had difficulty returning ballots, and one quarter cited lack of political motivation as a reason for not voting. Few overseas military voters reported using electronic technology to vote, but those who did overwhelmingly recalled positive experiences with it. This report also noted that improving the transmission of voting and registration materials would help increase voting rates among our overseas voters.

Today, we are going to hear about real solutions, actual examples from election officials who are working to reduce the time between ballot requests and ballots cast. We will also hear about innovations at the state level and get real-world descriptions about the obstacles our UOCAVA voters face. In identifying areas of improvement, like all areas of election administration, we must also be mindful of two things. One, solutions are not always a one-size-fits all and should not seek a one-size-fits all approach. And, secondly, we must recognize the state's role in registration and ballot transmission. My goal is to provide a national platform and clearinghouse for solutions and ideas to improve services for military and overseas voters. That work begins in earnest today, because these voters expect and, as I said, deserve to have their

voices heard on Election Day. And I again encourage local official officials to view the webcast of this meeting which will be available tomorrow at eac.gov.

With us today, we have two election officials and a representative from the National Conference of State Legislatures. I will introduce each of you, read your bio, and then you'll each be provided ten minutes to give your remarks on this issue. After each of you go, we'll then have questions from our Commissioners.

And with that, I will begin with Brad King. Mr. King is a Co-Director of the Election Division of the Office of Secretary of State of Indiana. He has a B.A. in history and political science from Indiana University and a J.D. from the College of William and Mary. He was admitted to the Bar in California, Indiana, and was also admitted to the United States Supreme Court. While a Senior Staff Attorney at the Indiana Legislative Services Agency, he served as counsel for the Indiana State Elections Committee, the Indiana House Elections Committee, the Indiana Senate Judiciary Committee and the Indiana House Judiciary Committee and assisted with the revision and recodification of the Indiana Election Code. While Assistant Corporation Counsel for the City of Indianapolis Legal Division, Mr. King also served as counsel for the Marion County Board of Voter Registration. He also served as former General Counsel to the Indiana State Election Board and the former Co-General Counsel to the Indiana Election Division, Office of Secretary of State. He's a member of the EAC Standards Board, and a state representative for Indiana, and current member

of the Executive Board of the Standards Board, and also serves as treasurer of NASED.

Next, we have Carye Blaney who serves as a County Clerk for Monongalia County, West Virginia. She was appointed in 2008 and elected in November 2008. She has a Bachelor's of Administration in Accounting from West Virginia University, and a Master's in Public Administration also from West Virginia University. She's worked with the County Assessor's Office from 1987 until being appointed as County Clerk. She also serves as a member of the National Association of County Recorders, Election Officials and Clerks, and is a member of the West Virginia County Clerk's Association.

Finally, we have Mr. Tom Intorcio from the National Conference of State Legislatures. Mr. Intorcio is a Policy Specialist in the Denver Office of the National Conference of State Legislatures where he tracks election issues. He's a graduate of Northwestern University and received his J.D. from Catholic University of America School of Law, here in Washington, D.C. He's also served as a former legislative assistant to Congressman Lincoln Diaz-Balart of Florida and was a District Director for Ohio Congressman Steve LaTourette. He coordinates a project entitled "Engaging State Legislatures in Election Reform," the goal of which is to provide state legislators and legislative staff with relevant and timely information about state election laws and reforms. His research concentrates on military and overseas voting, state primary election systems, voter registration and other election administration issues. He writes and helps edit "The Canvass"

which is NCSL's online newsletter on election issues, and he has provided research support for the Uniform Law Commission's Study and Drafting Committees on military and overseas voting.

So, now we will start with Mr. King. Thank you.

MR. KING:

Thank you, Madame Chair and members of the Commission, and EAC staff. My name is Brad King. I appreciate the kind introduction by the Chair. I'm pleased and privileged to address the Commission in today's public hearing on "Military and Overseas Citizens: Counting their Votes."

I'm here on behalf of Indiana Secretary of State Todd Rokita, who regrets that he could not accept the Commission's invitation, but asked me to convey his appreciation for the invitation, and your kindness in recognizing his leadership in providing services to military and overseas voters.

In its invitation, the Commission asked to hear about creative solutions in communicating with military and overseas voters. My first suggestion to present is to include military and overseas voters in every part of election administration. Since the Help America Vote Act of 2002 was implemented, a committee of appropriate individuals has been required in each state to develop and maintain the state plan for implementing that legislation. In Indiana, from the beginning, our state plan committee has included, at least one, and sometimes multiple, representatives of military and overseas voters.

Our current plan commission team member, Evan Shearin, served in Baghdad at the time of the 2008 general election. As a

result of that service, he's been able to provide the plan committee with a unique perspective on the obstacles that he encountered, individually, in attempting to cast his ballot at that time and under those circumstances. He's been able to offer insight into the strengths and weaknesses, both of the federal program and the state and local programs, in providing ballots to these voters. And I'm sure we would not have received observations from any other source. He's been an invaluable member of our state HAVA plan team.

So, as we continue the administration of the Help America Vote Act, we believe the presence of an individual, who serves as a voice for military and overseas voters, is essential in that planning process.

Indiana played a pivotal role in both the May 2008 Presidential primary and in the November 2008 general election. As a result, there was an extraordinary level of public interest and media coverage in the state's voting process. The Secretary of State's Office developed a comprehensive Readiness Briefing to provide an update on preparations for the election. In particular, this Readiness Briefing included detailed statistical information on ballots coming from military and overseas voters, so that the public could gauge the success of that program before the general election and deal with anticipated problems.

I want to emphasize, in this presentation, that we shouldn't forget that the talents and skills that members of the military have developed and have been polished during their service will carry over into their civilian life.

To recognize the ongoing role of these citizen soldiers, the Office of the Secretary of State has participated in “Hoosier Veteran Seamless Transition” workshops, which are held in several locations throughout Indiana. Evansville and Ft. Wayne are two examples. These workshops provide Hoosier soldiers returning from combat with the services involving voter registration and absentee balloting that they may need.

My second suggestion is to always ask local election officials to help, because they will do almost anything to assist a military or overseas voter receive and return their ballot. We all know that we ask local election officials to do an extraordinary amount of work during the general election process, in particular.

And that being said, I cannot recall a single instance, where a local election official complained about a request coming from a military or overseas voter who asked for assistance in obtaining their ballot. They have voiced frustration when their best efforts are frustrated, and that voter is not, for whatever reason, able to receive or return their ballot.

Since they will go to extraordinary lengths to get a ballot to and from a voter, I suggest the best communication strategy to local election officials is to begin by assuming that they will make extraordinary efforts. They simply need the information to help them do more, or do what must be done efficiently.

My third suggestion is to listen to feedback and learn from experience. We have learned to assume electronic in our communications, and not to assume paper.

The Secretary is especially appreciative of the Commission's recognition of the Office's efforts to publish the annual Military and Overseas Voters' Guide.

This Guide was recognized in 2004 by the Commission as a Best Practice for Facilitating Voting by UOCAVA voters, and it's a model for conveying detailed, comprehensive information about the UOCAVA process in an understandable way to military voters, members of their families, and overseas voters.

The Guide continues, since 2004, to be refined by feedback from these voters. Mr. Shearin, our military representative on the State Plan Committee, emphasized that while there will always be a need for paper copies of the Military and Overseas Voters' Guide to distribute, that military members, even in combat zones, have increased accessibility to online publications, and that the state would be better served by decreasing the number of paper copies printed, and increasing as much as possible electronic distribution of this publication.

The content of any Military and Overseas Voters' Guide should likewise be subject to ongoing review. It should be a living document. What was useful information in 2004 may be unnecessary in 2009.

Feedback received directly from military voters was also pivotal in updating Indiana law to incorporate the most modern technology available to these voters.

Since 2003, military voters have contacted the Office of the Secretary of State to advise that although it was common place to

find an Internet café or obtain access to email in Baghdad, faxes there were rare and difficult to access.

Recognition of this almost universal availability of email led to one of the most innovative approaches undertaken by the Office of Secretary of State; a mass email to Indiana National Guard members.

During August 2008, the Indiana National Guard sent a mass email, in collaboration with the Secretary of State's Office, to the military-issued email addresses of those individuals deployed overseas. The email contained information about how to register to vote, and how to cast an absentee ballot, and reached more than 3,500 Indiana National Guard members.

This electronic outreach was achieved at no cost, just a minimal amount of staff time to coordinate with the Office of the Adjutant General.

Indiana's most recent reform legislation reinforces the principle that when we administer the election process, we should assume electronic in our communications rather than paper.

Beginning on July 1, 2010, Indiana will join the States of Arizona and Washington in making online registration available to most voters.

An individual, who is eligible to register to vote, possesses a current and valid Indiana driver's license or identification card for non-drivers, will be able to submit a registration application online through a secure website established by the Secretary of State.

And although the option of online registration will be available to all voters, its potential benefit to military and overseas voters is particularly significant.

These voters have reported easy access to the Internet, even in combat theatres, and are likely to respond favorably to the opportunity to register online. In the end, the elimination of paper helps everyone involved in the process, from the military voters who are waiting expectantly for a registration application to be processed, to the local voter registration offices who are deluged by paper voter registration applications during high interest elections.

A final suggestion, is, don't just show up on Election Day. We should be there throughout the year to show our interest and support for military and overseas voters.

In 2008, Secretary Rokita was one of five secretaries invited by the Department of Defense to travel to Afghanistan and Iraq to inspect the military absentee ballot process, and had frank discussions with several soldiers about the voting process and their ability to participate.

The delegation also visited wounded soldiers at Landstuhl Air Force Base in Germany, which serves as the primary medical evacuation site for troops injured in Iraq and Afghanistan.

During an earlier visit to Landstuhl, the Secretary listened to the hospital's Chaplain, who explained that the military requires the soldiers hospitalized there to use pre-paid domestic telephone calling cards to contact individuals in the United States. The Secretary's Office publicized this need, and soon Hoosiers were purchasing these cards by the hundreds. In April 2008, the Office

collected thousands of pre-paid cards with more than 400,000 hours of minutes available to the users. By my rough, high school math, that equates to about 48 years worth of telephone time. And although a priority by the users of these cards, I'm sure, was to contact family and friends in the United States, these cards could also be used to communicate with local election officials if a question or problem arose regarding the absentee ballot process.

Finally, during a DoD-sponsored visit to Camp Eggers in Afghanistan, the Secretary listened to a suggestion from Lt. Commander Willy, a U.S. navy doctor from Kokomo, Indiana, who said that the best way the Secretary of State's Office could assist service members during the holidays would be to donate toys that the troops could distribute during humanitarian missions to local communities in Afghanistan.

These non-election related outreach efforts emphasize the importance and the mutual benefit of developing and maintaining ongoing relationships with military voters that include more than just the absentee voting process.

When we try to make certain that ballots are available to service members and are returned and counted, our effort becomes more effective if the military understands a little bit more about how the election administration process works. And likewise, we as election administrators benefit if we understand a little bit more about how the military communicates and provides support to its service members. We have to continue to learn, at least a little bit, about each other's jobs to be more effective in reaching out to each other.

Thank you for the opportunity to address the Commission.  
I'll be happy to respond to any questions.

CHAIR BEACH:

Thank you.

MS. BLANEY:

Honorable Chairwoman Beach, Vice-Chair Hillman, Commissioner Davidson, Executive Director Wilkey, Mr. Gilmour, Mr. King, Mr. Intorcio, good afternoon. My name is Carye Blaney and I am honored to serve as the County Clerk in Monongalia County, West Virginia. I thank you for the invitation to testify before you today in regard to the importance of doing everything possible to make the election more accessible to our military and overseas voters.

I bring you greetings from our West Virginia Secretary of State's Office and our entire West Virginia County Clerk's Association. It is indeed gratifying to partner with the United States Election Assistance Commission in effecting positive changes in our nation's election laws.

I have had the privilege of working as the County Clerk since March of 2007. Previous to becoming County Clerk, I had worked in our County Assessor's Office for over 20 years. I earned a Bachelor's Degree in Accounting in 1993, and a Master's Degree in Public Administration in 1999, both from West Virginia University. I have devoted my entire career in public service to the people of my home county and the people of West Virginia.

In the State of West Virginia, a County Clerk is responsible for numerous operations. We are the official recorder of all county

documents, we serve as the Secretary for the County Commission, we handle the probate of all estates, provide all birth and death certificates, and payroll for the county and various other miscellaneous duties. And last, but not least, we serve as the chief election official in our county. New voter registrations are processed and changes are made daily, and then every two years we convert our offices into running two labor intensive processes at the same time. As you can see, we wear many hats.

West Virginia is a comparatively small state, with a statewide population of approximately 1.8 million. Many counties and municipalities across the nation service a much larger population in an urban setting. I am glad this Commission is interested in the perspective of small town, rural America. West Virginia is a very proud state with a rich heritage steeped in patriotic service. We take our elections and our voting very seriously. We support our active military and we honor our veterans. I can assure you that the West Virginia Secretary of State and every County Clerk in the State of West Virginia considers military and overseas voting a very important issue.

For the 2008 elections, the West Virginia Secretary of State allowed each county the option of participating in the Federal Voting Assistance Program. The Defense Department has taken great strides to administer the Uniformed and Overseas Citizens Absentee Act, what we commonly refer to as UOCAVA. During this first year of participation, only 12 counties in West Virginia chose to allow the use of fax machines or email to transmit and receive absentee ballot communications with UOCAVA voters. Our office

in Monongalia County participated and processed 30 UOCAVA absentee ballots via fax.

In Monongalia County, we have a functional web page that we use to provide information to our citizens, in regard to their own personal voter registration, voting precinct locations and calendar deadlines. We also have a specific email address dedicated to handling all questions or concerns involved in the election process. We received a tremendous number of emails from voters with questions about applying for and receiving an absentee ballot. Many voters still opted to transmit their ballot using the United States Postal Service. For some, it was due to the lack of access to electronic equipment where they are located. For others, I am sure it was apprehension in deviating from the same method of absentee voting that has been used in all elections past. Some had concerns about giving up their lack of privacy and opted to use the more traditional method.

When a military voter requests an absentee ballot during an election, the military address is lodged onto a military mailing list and retained for a two-year period, so not only will the voter receive an absentee ballot for the current election, but they will also receive the material and application for the next election also. There are challenges in maintaining this list because the majority of military voters do not stay in the same location for a two-year period. Consequently, our local offices process communications to these individuals and the mail is returned. With the rapidly increasing price in postage, our counties shoulder a heavy financial burden.

In Monongalia County, we did receive concerns from voters who opted to transmit their ballot to our office using a fax machine. Through the Federal Voting Assistance Program, the Department of Defense serves as an intermediate auditor between the voter and our local election office. Transmittals from our office to the voter using fax or email are sent to the Department of Defense and then forwarded on to the voter. Several voters contacted our office directly because of the time delay in transmitting the ballot material and the voter actually receiving it. There is a certain amount of time necessary for the Department of Defense to process these ballots. These voters assumed that when providing their personal fax numbers to our local election office, processing would be a seamless line between their physical location and our office.

I have also had the opportunity to listen to voters who were overseas and had difficulty in resending election material through the mail. In one particular instance, an overseas voter applied for an absentee ballot by mail prior to the first day absentee ballots could be mailed before the 2008 general election. The absentee ballot was mailed via standard postal mail by the county on the first day allowed for processing. The voter received the ballot four days prior to the election. It took almost three weeks to get to its destination. The voter immediately completed the ballot and paperwork and paid \$50 to Federal Express to return the ballot to the respective county. Upon returning to the United States, the voter checked with the local election office to verify if the ballot had been received and was informed that it had been received, but after the canvassing period had ended and the election had been

certified. Consequently, this voter was not exactly happy that he had incurred such a huge financial expense and burden, only to find out that the ballot had not been processed.

In a second scenario, a military voter was complaining because they were not aware they could receive an absentee ballot from their home county. They were under the impression the only option was the use of the Federal Write-In Absentee Ballot.

The letter of invitation to appear before you today asked for solutions, creative innovations and recommendations for providing the same level of customer service to UOCAVA voters as we do our stateside voters.

An increased marketing effort to the active military and their families would provide a solution to those UOCAVA voters who are not aware they can cast their ballot via a more expedited manner than before. Many United States Embassies do send out information to United States citizens registered with the Embassy and living abroad, but many voters do not take advantage of this opportunity because of either a past experience of difficulty, or they are under the impression their only option is the use of the Federal Write-In Absentee Ballot.

In comparing the customer service given to stateside voters who cast an absentee ballot, and UOCAVA voters casting the same ballot, there is a financial expense to the overseas voter in returning the ballot to our office. A stateside absentee ballot is sent to the voter, including a postage paid return envelope. Our local office cannot include a postage paid return envelope to an overseas voter

because the United States postage is not recognized outside our borders for return purposes.

In addition to the use of the fax machine and email, an innovative and creative way to provide an inexpensive alternative for UOCAVA voters, would be to allow the use of a web cam in casting the absentee ballot directly with the local election official, or taking advantage of some of the new technology available through vendors who have developed applications and processes to allow the electronic submission of a ballot in a way that provides greater accessibility, security, privacy and efficiency at a lower cost. These innovations would allow the voter to communicate directly with the local election office, and would decrease the number of persons involved in the processing of an individual ballot, thus taking steps to further protect the voter's right to privacy.

Along the lines of recommendations for improvements to the system would be the implementation of one centralized location in each state responsible for handling the absentee voting process for UOCAVA voters. This could be done through the Secretary of State's Office. This would ensure the UOCAVA voter their ballot would be received securely, its sanctity would be protected, and it could be processed expeditiously. The cost savings to local election officials in hardware, software, labor, postage and time would be significant.

Since taking office a little over two years ago, I have worked very hard to make sure our office has used every technology available to provide more efficient customer service to the citizens of Monongalia County. The use of progressive electronic

technology has been our hallmark. One lesson I have learned, is, change never happens as quickly as you want it to. It is a process. There have been numerous improvements to our election system over the past decade, and there are more opportunities for improvement in the future.

In closing, please accept my appreciation, once again, for the opportunity to participate in this conversation with you today. West Virginia stands ready to assist this Commission in whatever way possible to improve our election system for UOCAVA voters.

I would be pleased to answer any questions you have.

Thank you.

CHAIR BEACH:

Thank you, Ms. Blaney. Mr. Intorcio.

MR. INTORCIO:

Thank you, Madame Chair, members of the Commission, and staff, for the opportunity today to address you on this very important issue, a critical issue. And it's an honor to be here, especially at this time of year in between Armed Forces Day and Memorial Day when we pay tribute to those who made the ultimate sacrifice for our freedoms.

The purpose of my statement today is to outline how states are working to make voting more accessible, user friendly and efficient for military and overseas citizens. You requested that I include in my testimony a discussion of current laws that impact these voters and any developing trends in legislation. In addition, you expressed interest in the impact of these laws -- the impact, I should say, on state budgets in making these improvements.

Insofar as budget and fiscal issues go beyond my direct concentration, and there is a general lack of aggregated data concerning military and overseas voters, particularly with regard to cost, I will strive to compare this targeted voting system to other areas in election administration, to bring them into context.

Now it goes without saying that it's never been easy for Americans to vote overseas. Former Congressman Bob Michael of Illinois, a Co-Chair of the bipartisan National Commission on Federal Election Reform, personally experienced this problem as a soldier engaged in combat in World War II. He recalled applying for an absentee ballot while moving with his unit across France, well before the election of 1944, but not receiving his ballot until he was trying to fight into Germany, well after the election was over. He mailed it in anyway sure that he wanted to vote, though he was not sure that anyone would count it.

In June of 1952, during the Korean War, President Harry S. Truman wrote to Congress asking for emergency legislation to address election calendar obstacles and other legal defects, to make it possible for military and overseas personnel to vote reliably in that election of November. And I quote President Truman, "Any such legislation by Congress should be temporary, since it should be possible to make all the necessary changes in state laws before the Congressional elections of 1954." He also shared the results of an extensive study of voting in the armed forces, which he requested from the American Political Science Association. In this report, the Association set forth a serviceman's bill of voting rights, which the President believed to be so sound and right, that it

deserves the support of the Congress and the country. It began, “We believe that all servicemen of voting age, whether in the United States or overseas, should have the right to vote without registering in person, to vote without paying a poll tax, to vote without meeting unreasonable residence requirements.”

I will skip to the item that relates to our discussion today, and that was right number six, and that is the right to receive ballots for primary and general elections in time to vote.

Madame Chair, at this time I would respectfully request that President Truman’s letter to Congress dated March 28<sup>th</sup> of 1952, a copy of which I’m holding in my hand, be submitted into the record for this hearing.

CHAIR BEACH:

So moved.

MR. INTORCIO:

Thank you. More than 57 years later, military personnel and their civilian counterparts still face an onerous obstacle course in acquiring and casting a ballot. In 2001, the bi-partisan National Commission on Federal Election Reform noted that the U.S. Constitution does not provide a right to vote. It provides that state governments shall determine who is eligible to vote in either state of federal elections, though subsequent amendments offer guards against discrimination in the grant or denial of the franchise.

In other words, the Qualifications Clause of Article I provides that voters in federal elections will meet the same qualifications required of voters selecting candidates for the most numerous chamber within each state legislature. The Congressional

Research Service has noted, over time, uniform requirements for eligibility concerning race, sex, economic status and age were adopted while voter registration practices continued to diverge according to the administrative needs and the political cultures of the individual states.

Throughout our electoral history, the American election system has operated impressively, despite two world wars, the Great Depression, and a host of other national crises. And that's precisely because, in large part, we have a diverse and highly decentralized system. Our elections benefit from the diversity of systems and structures tailored to each state's unique population and history.

I will skip over the data that I have in my statement, in regards to the number of UOCAVA voters that we're addressing today, insofar as that I believe has already been entered into today's record. But I would like to mention that -- I would like to thank you, first of all, again, for extending your leadership and your expertise to this very critical issue for the estimated 6.1 million military and overseas citizens.

And, in a January 2009 report from the Pew Center on the States, researchers found that one-third of all states do not provide enough time for military personnel stationed overseas to vote, and as many as half of all states need to improve their absentee voting processes to ensure the votes of servicemen and women abroad will be counted. The report, "No Time To Vote: Challenges Facing America's Military and Overseas Voters," is the first detailed public

analysis of states' voting systems for overseas and military personnel.

"No Time To Vote" indicates that 16 states and the District of Columbia do not provide enough time for military personnel overseas to vote. These states send absentee ballots after the date necessary for military voters to meet all the required deadlines, and three states are "at risk" for not allowing military personnel overseas enough time to vote. Again, "at risk," three states "at risk." They provide only five or fewer additional days beyond the necessary days to cast a ballot. This limited cushion is inadequate to ensure against unforeseen delays. And, finally, six states provide enough time to vote, only if the overseas voter uses either fax or electronic mail, a method that does raise bona fide concerns of privacy and security, as I know this Commission is readily aware.

It should be noted that this very helpful report did not take into account legislation enacted in 2008 that would be implemented after the report was published in January. For example, Minnesota enacted Senate File No. 1218, a major initiative to help military and overseas voters which we'll review later in this presentation. This data coincides with the Department of Defense surveys, which you've already mentioned, and the EAC surveys that you've discussed, showing that a lot of ballots, far too many ballots are returned as undeliverable, and that also the military have very, very difficult experiences in terms of getting registered, and they find the process overall very complicated.

At the core of the problem is the fact that the military postal system cannot deliver absentee ballots to military and overseas voters quickly enough to give them the adequate lead time to cast their ballot and have it returned in time for it to be counted.

Mail delivery times are critical, especially for blank and completed ballots. On average, states do not send out blank absentee ballots until 35 to 40 days before the election. This leaves little to no room for delay or error, as standard military mail delivery times range from between 24 and 36 days round-trip.

As the Commission knows, the United States Department of Defense Federal Voting Assistance Program recommends a minimum of 45 days between the date the ballot is mailed to the voter and the voter ballot return deadline. Only ten states mail ballots within this window in all elections. As an aside, in states requiring the return of a completed ballot by U.S. mail, the Uniform Law Commission Study Committee has observed that a bare minimum of 60 days would provide a better safe-harbor standard.

The Pew Center on the States research identified four policy options available to bring about improvements in the 25 states identified in their report as needing improvement, although the report was careful to identify, as our Chairwoman did today, that not every reform would be suitable for every state. They did, however, recommend expanding the use of the Federal Write-In Absentee Ballot, as a back-up measure for military voters who do not receive their state ballots in time. They also recommended allowing election materials to be transmitted electronically, as we've heard my colleague from Indiana discuss. They also recommended

ensuring a minimum of 45 days to allow ballots to travel between voters and election offices. And, finally, they recommended eliminating a requirement that military voters have their completed ballots notarized before returning them.

I'll now turn to the state reform initiatives and legislation that is of interest to you today. Providing a bare minimum of 45 days ballot transit time is one critical step states have taken to improve the system. To accomplish this, states must often modify their primary or general election calendars. So, for example, in Washington State, the state has recently changed their primary system. They've moved the primary from September the 16<sup>th</sup> to August 19<sup>th</sup> to give voters extra time beyond the 45 minimal window recommended by the FVAP. Minnesota is currently considering changing its election calendar to provide all absentee voters more days between the primary and general election system. Other states have moved back the deadline for receipt of ballots. For example, in Ohio they've moved back the date of receipt up to ten days after Election Day. California is now considering legislation to extend the ballot receipt deadline to 21 days. Now, of course, we should note that longer extensions may involve a delay with the production of preliminary election results.

CHAIR BEACH:

Excuse me, Mr. Intorcio.

MR. INTORCIO:

Yes.

CHAIR BEACH:

We're beyond the ten-minute mark. So can you wrap up?

MR. INTORCIO:

Okay, thank you, I'll wrap up then. Thank you very much.

In summary, the trend right now is toward electronic transmission and there's been very, very substantive movement in the states toward electronic transmission of ballots. Arizona, in fact, allows the casting of a ballot by electronic means. Arizona is the only state that currently authorizes this statewide. A few other states authorize this on a county-by-county or jurisdiction-by-jurisdiction basis.

In conclusion, I would just like to point out that the number of bills that are currently pending in the legislature to address this very critical issue are more than double what they were last year, indicating that states are reacting favorably and positively to address this very, very difficult issue.

Again, I thank you for the opportunity to be here today. And it has been an honor to be a part of this presentation with my colleagues. Thank you.

CHAIR BEACH:

Thank you very much. Before we begin our line of questioning, I just want to recognize two individuals in our audience. We have the Acting Director of the Federal Assistance Voting Program, Acting Director Bush, and Deputy Director Wiedmann in our audience as well. I just wanted to say thank you for attending our hearing today, and we look forward to working with you on this important issue.

Okay, I'll start with Commissioner Davidson with any questions for our panelists.

COMMISSIONER DAVIDSON:

Thank you. Well, this has definitely been an interest of mine and I really appreciate all of you being here. And, obviously, as we look forward into the future we know that more and more talk on electronic transfer of information to the overseas and military is going to be one of the areas that is very important. We're working currently with NIST in developing guidelines on transferring ballot information over to the voters, and then they'll have another report of transmitting information back and what kind of security that needs to be looked at in each and every area. And that is to be done at the end of this year, so we're really looking forward to that coming through, so that we have that kind of information. And the Chair has spoke about the fall meeting, and we think that they'll have enough that they'll be able to give us some information at that time, we're very hopeful, as we move forward in gaining more and more information on security and the need that needs to be met so that we can move forward.

Many states are moving forward, as you stated, on doing some Internet, whether it's county-by-county. Some Secretaries of State had said even with their own authority sometimes they have that within their states of saying, "We're going to do it as a test in doing Internet voting." I'm curious if any one of the three of you, did you try that any of that? I mean, I know obviously, you're speaking for all states, but are you aware of how many when you speak of the states? But have you tried anything like that or done

emergency ballots to go over either through email, internet? We know email is not as secure as the Internet. But did you do anything like that in Indiana, at all?

MR. KING:

Thank you, Commissioner Davidson. Certainly, with regard to the transmittal and return of ballots by email, that's been authorized by statute, for several years in Indiana, and refined even in this last legislative session to clear up some loose ends where the application of the law wasn't explicit. With regard to Internet voting, it's been discussed at our HAVA State Plan Committee level, but has never taken the form of legislation that would be necessary to authorize the use of the Internet in Indiana elections.

COMMISSIONER DAVIDSON:

Okay. What about West Virginia?

MS. BLANEY:

In West Virginia, our Secretary of State allowed the option to the counties to participate in the Federal Voting Assistance Program. So, we had the option of using a fax machine or an email to reach those military overseas voters for this election. We have had some vendors who have approached the state about the possibility of using the Internet and doing a completely electronic version for the military and overseas voters. And there is a possibility I believe that they will be doing a pilot using one or more counties in West Virginia to try and do a pilot project for that, for the next election.

COMMISSIONER DAVIDSON:

Okay. And about throughout the nation, do you have any information at all? And, you know, in the future that would be helpful, even if I could work with you to get information and share that with NIST also in the future. So I'd appreciate that too, Tom, so we'll talk.

MR. INTORCIO:

We would be glad to provide that in substantive form, Commissioner Davidson. And, I would just add that, currently Arizona, as I mentioned, is the only state that authorizes the casting of an electronic ballot. So, returning the ballot electronically, it's an upload. There are five other states, that in the 2008 election, did allow or permitted the casting of a ballot -- authorized I should say, authorized the casting of a ballot electronically. That was typically by email or a secure online link, usually a VPN, virtual private network system. And I can elaborate on that offline we can talk about that.

But the legislation is moving rapidly toward the implementation of electronic ballot transmission. That is a trend that is gaining very strong momentum, and I can give you some additional data on that. For example, just this year alone, Alabama, one of the states I should point out that was identified as a "No Time to Vote" state, the House has already passed legislation to allow for a pilot program to develop a secure electronic protocol analogous to what has been experimented with in Florida in Operation Bravo. In addition to that, Hawaii and Colorado have also bills currently pending before the legislature. I should say that in Colorado it's now passed and it's been sent onto the governor for

signature, and in Hawaii, the legislation is still being considered. But these would allow a pilot program to promote electronic ballot transmission, as well. So, this is a very cutting-edge trend, as far as legislation goes, and I would be happy to answer any further questions you have about that.

But, I think it's also important to note, as well, that although there is target relief for UOCAVA voters, as Mr. King pointed out, there are many things going on in the states, right now, that are benefiting the UOCAVA population, such as online voter registration, which Indiana just recently enacted. And that is also a trend, online voter registration. California recently enacted that. So, that's benefiting this population, as well.

COMMISSIONER DAVIDSON:

Absolutely. Any of the information -- obviously, the more information and the more knowledge they have, whether it's registration or voting, anything always helps our overseas and military voters.

In moving forward, as we are in this arena, making sure that, obviously, the security is there as well to protect the voters, I think, is one of the things that obviously Congress is interested in, we are and NIST is very interested in. And I think FVAP has always been very in tune with that also. I think that one of the things that we really need to remember is the states that are changing laws allowing more time to get their people in the primaries through and get ballots being sent out and overseas, I will tell you that August even isn't -- when you start putting on the deadlines to getting your candidates certified and your petitions in and everything else, you

usually end up with about 30 days, even when it's in August. So, that is a problem and the states looking at extending time at the end, that is really very helpful. But you are very wise that we are treading, if we have a very close election, on getting everything processed through, for Presidential meetings, for the states to be able to have those in time. So, that's one of the problems we have to look at. There's so many problems that affects this, and as we walk through it. So any suggestions you have. And obviously, the one you made about us updating our guidelines, putting in that they -- I love the idea of using the web to do a blanket fax out to all the military and any overseas people that you have, that you can always keep updated. So that type of information is something we can really add. And so, in giving states information that we can have to move them forward, in any aspect of it, I think is very important, whether it's Internet voting or getting things out there, so that the states -- it gives them ideas of how they can move forward. And obviously, that is very important.

So we do appreciate you being here and giving us information. And I will turn it back over to you.

CHAIR BEACH:

Okay, thanks. Vice-Chair Hillman, do you have any questions for our panelists?

VICE-CHAIR HILLMAN:

I do, I do. Let me start with Mr. King from Indiana. Thank you for joining us. Could you walk me through what might be a typical process, from what first triggers a voter registration and then a ballot request to an overseas voter, military or overseas voter,

through to the timeframes, and what happens at the state level and what happens at the local level? I just would sort of be interested to go through that process. And maybe you could, you know, do two scenarios, one where you have a good address for the military or overseas person, and in the situation where that person is reaching out to your office to get information about how to be a registered voter.

MR. KING:

Certainly, thank you, Commissioner Hillman. It is a day -- or is, rather, a process, not a day. The process of casting an absentee ballots requires that an individual be registered to receive that ballot. Sometimes that process can happen on the combined federal form, for example. In other situations, the individual may already be registered, but not be identified as a military or overseas voter, for example, until their absentee ballot application arrives. Indiana, like all other states, provides that absentee applications that arrive for military and overseas voters remain valid for the two following general elections after receipt of the application. It's a question of having the current address that ensures that the ballot is transmitted and reaches the military or overseas voter in time.

I think I would begin by noting that the first step that occurs at the local level is the preparation of the ballot for an individual to receive. We've already mentioned in presentations by the other panelists, here, that the certification process for the general election ballot can sometimes extend into September. And certainly, with regard to litigation by candidates who want to have access to the ballot for their own candidacy, or for late primaries, such as New

York's and Minnesota's, where candidates may not be selected until the second week of September, it poses a significant challenge, in any state, not just Indiana. And so, when the ballots are finalized through that process, oftentimes the local election official has already received or has a pending application from the military or overseas voter. Indiana law provides that in June of the general election year, a special state write-in ballot is to be transmitted to all individuals who have an absentee ballot application on file. And so, in that manner, it parallels the Federal Write-In Ballot and allows individuals to cast votes on state-level races in the election.

But the real process begins during the second half of September, when the following ballot finalization paper ballots are ready to be shipped out. Those ballots are sent around the world to APO and FPO addresses and, as we've heard, many times are delivered. Many times they're not delivered. If they're not delivered, the local election officials, unanimously, reach out to try to find a way to reach that voter. I know of instances where a County Clerk may know the family of the individual who's overseas and will reach out to that family to say, "Please, we need a current address to get this ballot to an overseas or military voter." When the ballot is sent, generally, the military and overseas voter has until noon, ten days after the election for that ballot to be returned by mail. So, Indiana has adopted a calendar that allows for that 45-day transit period, although not necessarily 45 days before Election Day. And our experience has been that a significant number of

military and overseas ballots do come in during that ten-day window after the election.

Indiana also uses both fax and email for the transmission of ballots. Faxes pose a particular problem. I sometimes think that fax machines will be as obscure and unknown in 20 years as the first electric typewriters or the first desktop calculators. But our statutes were enacted in the era when that was the technology of the day. The process at the local election level involves determined effort to get that fax through. I know of a case where one county election office had a staffer attempting to fax a ballot almost continuously for 24 to 48 hours to a civilian overseas voter in Vietnam. And finally, the fax went through, finally the voter was able to return it, but it reflected a real dedication of time and resources to use that method.

VICE-CHAIR HILLMAN:

So, remind me, can it be returned by fax?

MR. KING:

Yes, Commissioner, it can. It includes a requirement, though, for the voluntary waiver of the secrecy of the ballot. So the voter is fully informed that by using this method there has to be some sacrifice of secrecy.

VICE-CHAIR HILLMAN:

And even with that voluntary waiver, what steps are taken to ensure privacy? I mean, what can the voter feel is being done that they've waived their secrecy, but have some amount of privacy of that ballot?

MR. KING:

Thank you, I appreciate that question. One of the provisions in Indiana law for the treatment of the faxed ballot is once it's received it's treated in the same manner as much as possible as any other absentee ballot, which means that it's immediately taken by the county election office, sealed in a secrecy envelope and marked "Absentee ballot by fax", so that it's not available or accessible until the processing of other absentee ballots on Election Day.

VICE-CHAIR HILLMAN:

So, when the first inquiry comes in, I'm an overseas citizen and I have an Indiana address and I want to start the process, which means I have to get registered. If that inquiry is made to the Secretary of State's Office, does it have to be referred to the local jurisdiction? Or can the processing start at the Secretary's Office?

MR. KING:

The information would have to be referred to the county voter registration office. In Indiana, the county voter registrars make the determination regarding the validity of all registration applications. But, of course, the Secretary's Office and the Election Division facilitate getting that information out as quickly as possible.

VICE-CHAIR HILLMAN:

And in your creative outreach to voters, do you have any special outreach information or materials for the families of military and overseas citizens?

MR. KING:

Yes, the Military and Overseas Voters' Guide is divided into three segments; civilian overseas, military voters, and members of military voters' families. And so...

VICE-CHAIR HILLMAN:

But how do I know that Guide exists? How would I know if I'm living in any place in Indiana? How do I know how to get that information?

MR. KING:

The Guide itself is available on the website, and so an individual who has access to that website can locate it and find that information. But I understand your point that it's a process of alerting the people to the presence of that website and the presence of that information. And so, any creative outreach that we can undertake, whether it's through the mass emails in the case of the military, or press releases benefits everyone by making them aware of that resource.

VICE-CHAIR HILLMAN:

Great, thank you so much. Ms. Blaney?

MS. BLANEY:

Yes.

VICE-CHAIR HILLMAN:

You referred to the use of technology to further advance the processing of UOCAVA ballots and registration. Are -- the County Clerks, do you have authority to use technology or are you restricted by state law?

MS. BLANEY:

We are restricted by state law.

VICE-CHAIR HILLMAN:

Up to what point? I mean, what can you, as a County Clerk, do? What room is there for you to be creative, and what are the borders you bump up against saying that you can't use these kinds of processes or technologies?

MS. BLANEY:

Well, we have some authority in regard to the information that we are able to transmit through our websites, through press releases in the newspaper, to allow the citizens of our county to know that this process is open and available. So there are some families in the area that do have military men and women overseas or relatives overseas that need to cast a ballot that they can get that information to them, they can access that via the web page. In regard to being able to electronically transmit and receive back a ballot from a military and overseas voter, that would require a state law adjustment from our legislature. So, I'm not certain if I've answered your question appropriately, but that would be where the threshold would be. We would have marketing, I guess, marketing authority to be able to reach out, but we would not have the ability to actually put forth a totally Internet-based voting system without the authority of our state legislature.

VICE-CHAIR HILLMAN:

Okay. And in your testimony, you referred to the processing of UOCAVA absentee ballots via fax.

MS. BLANEY:

Um-hum.

VICE-CHAIR HILLMAN:

What -- in processing, is it outgoing and incoming...

MS. BLANEY:

Yes.

VICE-CHAIR HILLMAN:

...when you use that term "processing"?

MS. BLANEY:

Yes, when a military or overseas voter fills out and completed an application to receive an absentee ballot, they can indicate that they wish to receive and transmit that ballot back by fax. So, we can send them their ballot, it goes through the Department of Defense, which is forwarded on to them, and then they can also transmit that ballot back to us. There are some...

VICE-CHAIR HILLMAN:

Through DoD?

MS. BLANEY:

Through the DoD. The Department of Defense serves as an intermediate auditor, if you will, between the local election office and the actual voter.

VICE-CHAIR HILLMAN:

And do you think the voter understands that when they make that request to your office?

MS. BLANEY:

I think the majority of voters do not. I think when they complete an application to receive an absentee ballot, they're indicating their personal fax number on that application, which is coming directly to the local election official, and they assume that when they are submitting that application to our office that they are

dealing directly with the local election office. And so, what happens and what we experienced during this past election, was, there was a disconnect of sorts, because there is a timing issue that the Department of Defense has to receive the ballot, and then turn around and process it back to that original voter. I think some voters assume that if we told them we faxed it and they still hadn't received it, they would make a return call to our office stating they hadn't received the ballot back yet. And so, we had -- there was a process of explaining, you know, how the system worked, and once we did that, they understood. But I think that most overseas or military voters would prefer to have a seamless line, in some fashion, with their local election official.

VICE-CHAIR HILLMAN:

And what do you understand is the assurance of privacy that the voter has, going through the FVAP process?

MS. BLANEY:

Well, in West Virginia we have a plan in place so that there is a certain time period, working through the Department of Defense, that those ballots would be faxed back for a return ballot to our office. And upon receipt of that ballot on the fax machine, it is greeted by a Democrat and a Republican Division of Party Line person to receive that off the ballot. And then it is processed similar to how other absentee ballots are processed; put into a security envelope, placed into another envelope, and then placed in an absentee ballot box, awaiting Election Day.

VICE-CHAIR HILLMAN:

But what about when the fax is received at DoD, what do you understand, as an election administrator is the assurance of privacy on that part of the transmission? It goes from the voter to the DoD, and then from DoD to your office.

MS. BLANEY:

Correct.

VICE-CHAIR HILLMAN:

So at the DoD transmittal curve, what do you understand is the assurance of privacy? I understand they've waived their secrecy, but...

MS. BLANEY:

Correct. I wouldn't be able to speak about specifics, because I don't know, but I would understand the same privacy concerns that we take at the local election office would be also taken at the Department of Defense. In regard to those personnel responsible for receiving those fax transmissions from the voter, they would be required to -- I don't know if they have the Division of Political Party responsibility that we put in on our side in West Virginia, but I believe that they would have the secrecy and the privacy requirement of their personnel to make sure that they protected the sanctity of that ballot to whatever extent possible.

VICE-CHAIR HILLMAN:

And, not to put you on the spot, but are you comfortable with that, as comfortable as you could be with the process?

MS. BLANEY:

Yes, I am. I think that it is an opportunity for us to try to reach more voters than we have had an opportunity to reach. Do I

think that the system can be improved? Yes, I do. I personally think that the less people that you have involved in the process the more sanctity of that ballot you can provide, the more protection of the voter's privacy you can provide, the less people who are actually touching that piece of paper. Removing the paper, as my colleagues here at the table have said, allows us to remove a lot of the security issues involved in processing those ballots. But, you know, I do believe that the process that we have had to work through, thus far, has worked. Could it be improved? Yes.

VICE-CHAIR HILLMAN:

Thank you very much. And for this Conference of State Legislatures, you have, I know, a winter and summer conferences, do you?

MR. INTORCIO:

That is correct, Commissioner.

VICE-CHAIR HILLMAN:

Your membership.

MR. INTORCIO:

We have a spring forum and a fall forum, and then we have our annual meeting, which is now entitled our Legislative Summit, and that's, typically, in July or August. But we do have a fall and spring meeting.

VICE-CHAIR HILLMAN:

Right. And the Legislative Summit. And then do you have educational seminars in between, either for caucuses or committees, or whatever, other kind of mechanisms you have to get the work done for your members?

MR. INTORCIO:

Yes, we do. We also have invitational meetings. We are governed by committees. We have standing committees, and our standing committees meet at the three meetings that we just outlined. So, yes, we do have a number of opportunities for continuing education.

VICE-CHAIR HILLMAN:

What is, or are, the standing committees that deal with HAVA, NVRA and UOCAVA issues?

MR. INTORCIO:

The primary two standing committees that would address issues related to HAVA would be our, essentially, Criminal Justice Committee, which takes on a federal component related to judiciary issues. So, for example, HAVA might be discussed in that committee, or our Redistricting Elections Committee would also likely take that up.

VICE-CHAIR HILLMAN:

Okay. And how often, since HAVA was passed, have any of the conferences, the NCSL conferences, or seminars focused on HAVA issues, either sharing of best practices, or presentation by federal officials or -- you know where I'm going with this.

MR. INTORCIO:

Well, I can only say that -- I should say that I've only been with NCSL for about 19, 20 months now. But I am generally familiar with some of the meetings we've had in the past, and we have discussed HAVA, although, I think it's fair to say that I think we will look at HAVA again, in the near future, just to review where

we are since now that it's been seven years since HAVA was enacted.

VICE-CHAIR HILLMAN:

And I know that's not what you came here to testify on, but the presentation, where you covered UOCAVA, and the levels of activity among the states with respect to various law changes, I think, does, sort of, beg the question about taking advantage of forums where state legislatures come together, because I am amazed, sometimes, as I have an opportunity to travel around the country, at how little legislators understand about HAVA, and the interface of the Help America Vote Act with the processes in their state, and the availability of the many millions of dollars that the Federal Government has made available to the states. So, I would really encourage the conference to continue to push that.

MR. INTORCIO:

Thank you, Commissioner Hillman. We will definitely pursue that.

VICE-CHAIR HILLMAN:

All right, and I just want to make one final observation, which is, what I absolutely loved as I looked at the written testimony and listened to your presentation, not once did I hear the word "fraud." Not once. And I think that is a remarkable and an honorable way to look at this process, as not being one that people view as being abused in the transmittal of these ballots.

Thank you.

CHAIR BEACH:

Okay, Mr. Intorcio, you talked about states that have, you know, innovations, and are looking to have, you know, programs to help UOCAVA voters. Do you have any raw data or stats on the financial impact it is to counties, particularly in a lot of counties, local jurisdictions, states are experiencing budgetary concerns? Like how much would one of these programs cost? Do you have any data on that?

MR. INTORCIO:

Yes. In general, I think it would be probably helpful to mention that scoring of election legislation -- budget scoring of election legislation is sometimes -- it's not something that is regular as a practice. Some states will automatically score every bill that would go through an elections committee. Other states might only do so under special request. But, for example, in the State of Colorado, which has recently adopted -- our legislature has recently adopted a pilot program, and that bill, House Bill 1205, currently sits at the Governor's desk waiting for signature. This would implement a pilot program for, essentially, electronic voting by UOCAVA members. That bill -- the fiscal note, which I have here, and I would like to ask that we admit this into the record as well, that fiscal note projects the Fiscal Year 2011-2012 costs to be \$392,500, and then the following Fiscal year \$92,500. So, roughly \$485,000 budgeted for this pilot program.

Comparatively speaking -- I can just say, generally speaking, comparatively, this amount of funding for a pilot program is relatively small with regard to other major election reform bills. For example, a state that would implement early voting would see a

considerably higher level of funding required. Maryland is a state that has recently adopted early voting, and Maryland has wrestled with just how to go about funding that program, and is tapping into some dollars from other sources in order to have the necessary funds to accomplish that. So, it really does not appear to be a major concern, for example, electronic transmission measures, because after all, electronic transmission typically saves the state money because you get away from paper, as my colleague Mr. King pointed out.

CHAIR BEACH:

Okay, thank you. Ms. Blaney, you said in your testimony that there was a military voter that you had, you know, spoken with or talked to, and he was only under the impression that they had to use the Federal Write-In Absentee Ballot, and that they were not aware of going through the absentee ballot process from their local jurisdiction. And I know there are also voters, maybe not registered, you know, with Embassies, they're not able to get information. Do you have any recommendations on how state and locals, or even the EAC, how we can help in assisting or doing some sort of voter education on these issues, so our overseas voters are more informed of this process, or what options are available to them?

MS. BLANEY:

Thank you, Madame Chair. One of the recommendations would be to create one centralized location to handle the military and overseas voting. Our recommendation was the possibility of using Secretary of State's Office. Most military and overseas

voters wouldn't necessarily have to go to the length of finding how to get into contact with their local election official. If they knew they were a West Virginia resident, they could contact the West Virginia Secretary of State's Office and do it that way.

Unfortunately, on our local end, we are not privileged to have the information about these voters. Because of privacy concerns, their names are not released to us. So, I was very interested in what Mr. King from Indiana had indicated earlier about the transmission of emails to National Guard members to alert them that they had the opportunity of applying to receive an absentee ballot. We would love to be able to do something like that ourselves if we had the availability of that information to know who those military personnel were, who the overseas voters are. Unfortunately, someone working abroad from the State of West Virginia, we don't necessarily know that until they make contact with our office. So, if we had some mechanism, through either the Department of Defense, or through our local military affairs branch, and if there was some release on the privacy of who these individuals are so that we could make contact with them, that would enable our local election officials to be able to respond to these people and to reach out to them and provide them with the information that they need to get their ballots in.

CHAIR BEACH:

Is there a mechanism in place, as far as, you know, we know, particularly, with the military addresses change, because their duties change, and they move from country to country, jurisdiction to jurisdiction. Is there a way -- or how do you get an

update address, currently, for your military voter that resides in West Virginia?

MS. BLANEY:

Well, if they have requested an absentee ballot in the past we keep them on a military -- what we call a military mailing list. And when we submit information to them, or communications to them, using that previous address, if upon return to our office there is not a forwarding address initiated, then we go to sort of third-party methods. If we have other individuals registered in our database under that name, we try to locate a family member and find out if that person is still in the military, you know. That is one benefit to being small-town, rural America. As Mr. King had also said in his testimony, you go to those extra lengths to try to make sure that you try to make contact with that person, so that you don't lose that line of communication, you know. Once that communication line is broken, it's hard to get back sometimes.

CHAIR BEACH:

I have one other question for you. In your testimony, you provide statistics from the 2008 general election for West Virginia, and you state, of the number of West Virginia UOCAVA voters, your total is 42,714. And then, when you combine the total number of UOCAVA ballots in West Virginia from overseas voters and from the military, it's almost 2,400.

MS. BLANEY:

Um-hum.

CHAIR BEACH:

Is that all the ballots that you received from the election out of the 42,000, so that there's approximately 40,000 or so voters that did not cast ballots? Or did that include also ballots that were not received or counted in time or received after the canvassing process?

MS. BLANEY:

These numbers were provided from the West Virginia Secretary of State's Office. The 42,000 is the total number of eligible military and overseas voters, as they believe them to be, for the State of West Virginia. The actual number of requests for military and overseas ballots, for the 2008 general election, ran approximately around 4,000 plus ballots. So, out of 4,000 plus requests for military or overseas ballots, there were approximately 2,400 returned.

CHAIR BEACH:

Okay.

MS. BLANEY:

321 from overseas, and 2,053 from military.

CHAIR BEACH:

So it was about 2,000 -- between 1,500 and 2,000 that were not...

MS. BLANEY:

That were not returned for whatever various reason.

CHAIR BEACH:

Okay.

MS. BLANEY:

Yes, ma'am.

CHAIR BEACH:

Thank you. Mr. King, you discussed a lot of the initiatives that Indiana has done for military and overseas voters. Have any of them required legislation? And, if so, how long does something like that take to implement?

MR. KING:

Thank you, Madame Chair. Yes, many of the initiatives required legislation. Online voter registration would be the most recent example. Likewise, the absentee ballot process to guarantee the security and integrity of the ballot has very detailed legislative requirements. And so, for us to implement the transmission/receipt of absentee ballot materials took legislation.

But there are steps that can be taken that don't require legislation. Reaching out to the military, to overseas voters, is something that any elected official, any administrative agency in the election process can do at the state or at the local level.

CHAIR BEACH:

Okay, thank you. And I have one last question, actually, for all of you, and we can start with Mr. King working back. I do know it's hard to, you know, keep track of overseas voters, particularly military and others that move quite frequently. What advice would you give to voters? Are there things that they can do to work with you on the state or local level, you know, with regards to registration and ballot transmission? Do you have any recommendations that we can give the voters and the public, today?

MR. KING:

Madame Chair, I think the important thing to remember is that many of us have worked in the election administration process for many years, and we understand a lot more about the mechanics of the process than certainly the average voter does, and so, we have to begin by assuming that a voter needs basic information to understand the voter registration process and the absentee ballot process. We need to keep our materials straightforward and as simple as we can to make sure that voters who are inclined to do so take advantage of the opportunity to register and to vote.

CHAIR BEACH:

Thank you. Ms. Blaney?

MS. BLANEY:

I believe that we need to promote the use of the information that we have on our web pages. Voter registration forms are available through many local election official offices and our Secretary of State's Office in West Virginia. A change of those forms may also be used for change of address. And I think that is the most important thing that we can impress upon a voter; that the responsibility for making sure that your local election official has your correct information is you need to provide it to that local election official. And the use and promoting the use of checking that web page for alerts and using the forms available to you electronically to make sure that you can return that information to your local election official is one of the best things that I think we can -- best pieces of information we can provide to a voter to keep current and make sure that they do not lose communication with your local election official.

CHAIR BEACH:

Thank you.

MR. INTORCIO:

Thank you for the question, Madame Chair. The immediate thing that comes to mind, in answer to your question, would be to promote a greater familiarity with the Federal Write-In Absentee Ballot. I think, in particular, working with other federal agencies to promote, for example, the Overseas Vote Foundation, online Federal Write-in Absentee Ballot, that page -- that cite, I should say, rather, is very useful for voters. And any promotion that the Commission can extend to the Overseas Vote Foundation I'm sure would be very well received.

CHAIR BEACH:

Okay, thank you. I believe Commissioner Davidson has one last question.

COMMISSIONER DAVIDSON:

Well, you hit on my question. I did have an additional question, because of the blank ballot, the ability for voters to take the election material and vote a blank ballot, in case that their ballot didn't get back in time, because they've got at least 30 days, maybe even more than that, that they could vote a blank ballot. Do you see that being utilized, you know, in the state and in the county? Is it utilized in your state, at all, or very much? It's a tool that, I agree, I don't think it's being utilized as well as it should be, because that blank ballot doesn't count if the regular ballot gets back in time. So, are there suggestions what to do to make that more available? Or is it being used? It's a two-part question.

MR. KING:

Yes, thank you. It certainly is being used, but not at the levels that one might hope for knowing the need out there. We certainly receive telephone inquiries from county election officials, who perhaps are administering their first election and don't understand the process of the Federal Write-In Absentee Ballot, and so, I know that it's being used, and local election officials are trying to make it work.

I think this comes back to a point that I made in my presentation about how we can benefit by learning a little more detail about how each other do our jobs. I've attended election administrator conferences and events for many years, but I can't think that I have ever met or seen a presentation from the military postal service. I think many local election officials would find it very illuminating to understand what their time constraints and their methods of operation are that would affect the transmittal and use of the Federal Write-In Absentee Ballot, along with regular ballots.

I think with regard to overseas voters, this was mentioned earlier, those who are overseas can register with Embassies. I would find it intriguing to hear a spokesman from the State Department provide some information about what's involved in that program and how we can reach out to overseas voters. And so, yes, I think there are steps we can take to improve the use of the Federal Write-In Absentee Ballot for both of those groups.

COMMISSIONER DAVIDSON:

Do you have anything to add?

MS. BLANEY:

I would just add that in West Virginia, in my particular county in Monongalia County, it was used, I believe, in less than five instances, five cases, from voters who were concerned that their ballot was not going to reach us in time, and they took advantage of that. But it is -- it is not used as a predominant method, it is very sparsely used throughout the other counties, I am sure.

But communication, again, I believe is the key in reaching these voters through some method to allow and avail to them all of their opportunities to be able to get their ballot back to their local election official, in an expeditious manner, I think, is the greatest key, the greatest thing that we can do.

COMMISSIONER DAVIDSON:

The only other statement I would like to make sure that's on the record, I do that know FVAP has been very proactive in working with states and locals if addresses come back that you can work with them, they will help you gain a correct address. That's for the military. It doesn't serve everybody. But, obviously, I definitely want that to be on the tape, so people would be aware of that information.

Thank you again.

CHAIR BEACH:

Mr. Executive Director, do you have any comments or...

EXECUTIVE DIRECTOR WILKEY:

I know we're trying to wrap up, so I'll try to make this as brief as I can with a couple comments and then a quick question. To my former colleague, Brad, congratulations for your efforts in this area

and I hope you would take that back to Secretary Rokita, as well. I think you've done a lot of work in this area.

But, I'm going to follow up -- I'm going to go in a total different direction than I thought I was going in because you intrigued me with your response to the last question, regarding the Federal Write-In Ballot. Do you, and Carye, you can chime in here also, do you think there's a notion out there among both election officials and the voter that this is not a real ballot; that we're not conveying the message enough that if you get this, utilize it, because if your ballot doesn't come back in time, that they're going to count what's ever on that ballot that's a real-- if it's a real candidate? Because, I have the thought that that's part of the problem, in them not being utilized, as much.

MR. KING:

I can respond to that. Thank you, Tom. I entirely agree. I think, again, we have to keep in mind that the users of the blank ballot are not necessarily sophisticated in the election administration process, and when they were civilians or residents of their home jurisdiction, of course, the names of candidates were on the ballot. That's what a ballot looks like. And so, I think we do have to go to extra efforts to educate voters to say, "Yes, this is real, even though you have to cast it in a different method, you have to write in the names of candidates or parties."

MS. BLANEY:

I agree. I think it's education. Again, I think a lot of voters have expressed that if they didn't feel that their original ballot, or that their local ballot was going to get returned, how did they have

any confidence that we were going to get the Federal Write-In Absentee Ballot, and how would they know that we received it, you know. We try to through email -- if someone had emailed us requesting an absentee ballot application, we try to keep a communication back with email, so that when they receive that ballot from us via fax machine, sometimes they'll email us and say, "Okay, I received my ballot, I've sent it back today." If we have not heard back from them for a period of time, we respond back to them via email. Of course, we're able to do that, again, because we are a smaller venue. I'm certain that a lot of counties, a lot of municipalities around the country do not have that luxury. But we have had concerns from voters who did not feel that that ballot was going to be counted, or it's going to be utilized by the local election official. But upon being aware of that concern, and once we explain to them the process, and how we actually use that ballot for their benefit, then they were -- they were quite comfortable with it.

EXECUTIVE DIRECTOR WILKEY:

Thank you, Carye. By the way, you know, I've been around a long time and I can tell you that most of the innovations in election administration, and I'm sure Brad will agree, come from our small jurisdictions...

MR. KING:

True.

EXECUTIVE DIRECTOR WILKEY:

...where they have to learn how to do more with less, and they have to take the bull by the horn and do the best job they can,

and so, some of the very best things that come out in our field of elections come from our small to medium sized jurisdictions.

I want to ask you two a quick question and I don't want to put you on the spot, but in your view what is more secure, getting a ballot via the Internet or using the fax system?

MR. KING:

It's a difficult question to respond to. I think it's the danger you know and the danger you don't. The danger with faxed ballots is that a human being has to pick up a piece of paper from the fax, and as we've discussed, there's no way to preserve secrecy, absolutely, under those circumstances. We don't know the potential risks, with regard to transmittal of ballots over the Internet. We have to pick up the papers to learn about events like the Melissa virus or other things that we may not have anticipated. And so, it really is a question of gathering more information to be more confident in that process.

MS. BLANEY:

I believe that the more secure method is the use of the Internet and the electronic technology. Paper ballots have long been a more manipulatable form of voting. There is, I think, a false sense of security that some voters have in using the paper ballot. But, I personally believe the less people involved in the process from point "A" to point "B" provides the voter the greatest amount of privacy and protection of the sanctity of that ballot.

EXECUTIVE DIRECTOR WILKEY:

Thank you both, because that's a debate I hear and a lot of discussion, I hear all the time, amongst both state and local election officials.

Just one last question, Mr. Intorcio. I don't think there's any question that the major obstacles that we're dealing with, in this area, UOVCAV voters and overseas voters, are issues that need to be resolved at the state level. The local election jurisdiction can't do anything unless they have a state statute that tells them they can do it, or they have the authority to do it. And so, your organization plays a major role, and I think that's part of what Commissioner Hillman was trying to get at, is, are you using the bully pulpit of the NCSL to try to get that word out. And frankly, you know, I come from one of those states, where I've been trying to get the primary changed since 1974, because it is the biggest obstacle, in my view, of getting that ballot to the voter and back, and that's why so many of our overseas voters, in my state, don't get an opportunity to cast their ballots. So, it's issues like that that we hope that NCSL is taking the leadership in and informing their state legislatures just how much of a role they have in this process. Because, we can do everything at the Federal Government, and I salute the Congress for having the hearings on this issue, but it's still -- where the rubber meets the road, is, at the state level, where a local jurisdiction has to have the authority, by statute, to be able to do some of these things. And thank God, we have a lot of states now, who have taken that bull by the horns and who have adopted some very progressive legislation in order to accommodate this. So, I hope that you will continue your work in that area.

MR. INTORCIO:

Thank you.

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madame Chair.

CHAIR BEACH:

Thank you. Do you have any closing remarks?

VICE-CHAIR HILLMAN:

I do not.

CHAIR BEACH:

Okay.

COMMISSIONER DAVIDSON:

The only closing remark that I'd like to add is to offer ourselves, of coming to your meetings, whether it's giving presentations, or being there to answer questions of legislators, to be available to take part. If we knew when they were, or we were invited, I think that we could be a help to the legislatures, as they move forward, in sharing what we know.

MR. INTORCIO:

Well, we appreciate that and we will explore that with staff in follow-up. Thank you, Commissioner.

COMMISSIONER DAVIDSON:

Thank you.

CHAIR BEACH:

Well, thank you. I want to thank all of you for your presentations today and commend you on your efforts and your hard work in this area.

And our meeting is now adjourned.

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[The Public Meeting of the U.S. Election Assistance Commission adjourned at  
3:26 p.m. EDT]

add/ed