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4 U.S. ELECTION ASSISTANCE COMMISSION

5 PUBLIC MEETING

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7 1225 New York Avenue, N.W.

8 Washington, D.C.

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10 Taken on the date of:

11 Thursday, October 4, 2007

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21 Start time: 10:00 o'clock a.m.

22 Taken by: Ronnie C. Palmer, a court reporter

1 BEFORE:

2 DONETTA DAVIDSON, CHAIR

3 ROSEMARY RODRIGUEZ, VICE CHAIR

4 ALSO PRESENT:

5 COMMISSIONER GRACIA HILLMAN

6 COMMISSIONER CAROLINE HUNTER

7 GAVIN GILMOUR, DEPUTY GENERAL COUNSEL

8 TOM WILKEY, EXECUTIVE DIRECTOR

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

2 CHAIR DAVIDSON: I am going to call the
3 meeting to order. I would like people to please
4 silence their telephones or turn them off, one of the
5 two. And I appreciate it if everybody would stand,
6 please. We will do the pledge of allegiance.

7 (Pledge of Allegiance)

8 Our acting general counsel is here, Gavin
9 Gilmour, and I'll ask him to do the roll, if you
10 would, please.

11 MR. GILMOUR: I certainly will. Would
12 each commissioner please respond orally when I call
13 your name. Chair Donetta Davidson?

14 CHAIR DAVIDSON: Present.

15 MR. GILMOUR: Vice Chair Rosemary
16 Rodriguez?

17 COMMISSIONER RODRIGUEZ: Here.

18 MR. GILMOUR: Commissioner Gracia

19 Hillman?

20 COMMISSIONER HILLMAN: Here.

21 MR. GILMOUR: And Commissioner Caroline

22 Hunter?

1 COMMISSIONER HUNTER: Here.

2 MR. GILMOUR: Madam Chair, all four

3 members are present.

4 CHAIR DAVIDSON: Thank you. If everyone

5 would turn to tab one and review the agenda, I

6 entertain a motion.

7 COMMISSIONER RODRIGUEZ: I move that we

8 adopt the agenda for today, October 4th.

9 CHAIR DAVIDSON: Second?

10 COMMISSIONER HUNTER: Second.

11 CHAIR DAVIDSON: The motion has been made

12 and seconded that we approve the agenda. All in

13 favor?

14 (All Ayes)

15 CHAIR DAVIDSON: Opposed? The motion

16 carries.

17 Today we've got a fairly lengthy agenda.

18 I think it's going to be a very interesting day, and

19 hopefully everybody in here we are going to have a

20 discussion.

21 This is one of our first times at a

22 meeting we are going to discuss issues, and I think

1 this will be a real eye opening to all of us.

2 As we proceed, I want to go into the old
3 business and the minutes of the last meeting. But I
4 do welcome everybody and thank you for being here.

5 The minutes are underneath tab two. They
6 are the minutes of the meeting of September 6th, and
7 I would entertain a motion to either amend or to
8 approve.

9 COMMISSIONER HUNTER: I move to approve.

10 COMMISSIONER HILLMAN: Second.

11 CHAIR DAVIDSON: The motion has been made
12 and the second to approve the minutes of September
13 6th. All those in favor?.

14 COMMISSIONER HILLMAN: I have a question.

15 CHAIR DAVIDSON: Oh. Sorry.

16 COMMISSIONER HILLMAN: I have been

17 proceeding with review of the minutes on the hope --
18 since I don't like to assume things -- that others
19 including the general counsel and other senior staff
20 have been reviewing the portions of the minutes that
21 are directly relevant to their presentations or the
22 guests they may have brought to our hearings.

1 I say that because I did not have a
2 chance, the time to read the entire minutes. So, I
3 just want to at least get some assurance that other
4 people did look at other sections of it so we're
5 pretty totally in -- the minutes accurately reflect
6 the group discussions.

7 CHAIR DAVIDSON: Any other discussion? I
8 think that the staff has reviewed the minutes. I see
9 nods of -- Maybe I'll ask our director if you have
10 reviewed the minutes and how you --

11 MR. WILKEY: I certainly have, and I
12 believe they are in order. I know it was a long
13 meeting last time. So, it is longer than usual.

14 I thought that the capturing of a great
15 deal of the testimony that was presented to us at the
16 end of our meeting when we had the open testimony was

17 particularly important that we put as much
18 information in that as possible for the record
19 because those were designed to guide us as we move
20 along in this process.

21 So, I thought that was very important.

22 Yes. I did take a look particularly at the area

1 where I had presented information.

2 CHAIR DAVIDSON: Any other questions by

3 any other commissioners?

4 We will proceed to vote then. All in

5 favor?

6 (All Ayes)

7 Opposed? The motion carries.

8 It is time to have a report from our

9 executive director, Tom Wilkey, and that I think you

10 will find under tab three.

11 MR. WILKEY: Thank you, Madam Chair. I

12 want to include my welcome, as well, to everyone who

13 are attending this morning's meeting.

14 We do have a lot on the agenda today.

15 So, I will try to make this report as brief as can.

16 Under voting system certification, ten voting system

17 manufacturers have registered for the EAC's Testing
18 and Certification Program. Nine voting systems have
19 been submitted for testing.

20 We have received three more test plans
21 which will we posted in the next few days. They are
22 from Dominion, MicroVote, and ES&S.

1 Please note the federal law prohibits us
2 from releasing confidential or trade secret
3 information, but we will post everything that the
4 federal law allows. I urge you if you have interest
5 in this subject to take a look at our web sites
6 because we have a great deal of information.

7 We have issued two notices of
8 noncompliance. We have posted a reply from Sequoia
9 in response to our notice of noncompliance.

10 We have posted a reply from AVS in
11 response to our questions about the motherboard. We
12 are reviewing this information that they submitted,
13 and we will let the public know when that issue is
14 resolved.

15 We have issued two more notices of
16 clarification for NOCs, and we encourage election

17 officials, manufacturers, and the public to take

18 notice of these.

19 One is NOC 07004 which is the voting

20 system manufacturing facilities and NOC 07006 which

21 deals with voting system test laboratory

22 responsibilities in the management and oversight of

1 third-party testing.

2 These NOCs are actually to clarify all
3 the regulations and all the policy decisions that we
4 have in our certification. All this information is
5 available at the EAC dot gov and by clicking on the
6 voting system center link.

7 Under voting system test labs, labs EAC
8 has certified three labs to test iBeta quality, and
9 today the commissioners will continue accrediting
10 Wyle Laboratories. Again, you can visit the EAC dot
11 gov for more information on these webs -- on these
12 laboratories.

13 Under voting system guidelines, Brian
14 Hancock is going to give us an update shortly. So, I
15 will be brief on this. We have received a draft
16 version from the Technical Guidelines Development

17 Committee. It is posted on our web site.

18 We are testing an online comment tool,

19 and that should be available shortly. That will

20 allow the public to look at the document to make

21 their comments, and those comments will be available

22 to everybody that visits our web site.

1 Under election management guidelines, at
2 the end of the EAC will issue six more Quick Start
3 Guides. Let me say that these guides are very
4 popular with election officials. If you have not
5 seen them, this is what they look like.

6 They are actually mini versions on the
7 chapters that are in our Mangement Guidelines Manual.
8 We will distribute them to election officials,
9 approximately 7,000 of them across the country, and
10 they will also be on our web site.

11 The ones that we are intending to release
12 in October will be absentee voting and vote by mail,
13 acceptance testing, change management, contingency
14 planning, polling place and vote center management,
15 and media and public relations.

16 Under research, we recently released a

17 report which show all of us have more work to do to

18 make sure these voters' voices are heard on election

19 day.

20 We also held a very, very comprehensive

21 and well done UOCAVA conference about how to better

22 serve these voters. We want to thank all of the

1 participants with their input.

2 You can go to our web site for conference
3 materials, our draft case studies document, and our
4 final 2006 UOCAVA report.

5 Under general updates, we are launching a
6 new web site. So, please e-mail us at HAVAinfo at
7 ECA dot gov if you have questions or need help
8 finding information on the new site.

9 Please note that if you linked us in the
10 past these links may be broken. Just e-mail us and
11 we will be glad to help you update your links.

12 EAC distributes a monthly newsletters --
13 monthly electronic newsletter that provides updates
14 on our activities. Upcoming meetings and other
15 HAVA-related issues.

16 It has been very well received from the

17 if comments I get as I see election officials around

18 the country.

19 The best way to receive frequent updates

20 is also the best way to receive updates on our voting

21 system. If you have not signed up yet, you can do so

22 by calling us toll-free at 866-747-1471 or e-mailing

1 us at HAVAINFO dot gov.

2 Madam Chair, that is my report for today.

3 CHAIR DAVIDSON: Do you have any

4 questions for Tom Wilkey?

5 COMMISSIONER HILLMAN: I do.

6 CHAIR DAVIDSON: Okay.

7 COMMISSIONER HILLMAN: Tom, of the nine

8 voting systems that have been submitted for testing,

9 are any of them manufactured by new manufacturers?

10 That is, is there anybody in the pool of nine who has

11 not previously --

12 MR. WILKEY: Yes. I believe Dominion is

13 a new company that is marketing the product that is

14 brand new. I believe they are using another major

15 manufacturer to go into a short business venture with

16 them, but they are a new system and it's an optional

17 system.

18 CHAIR DAVIDSON: Any other questions?

19 All right. Thank you.

20 Next we are going to have a report on our

21 National Voter Laboratory Accreditation Program and

22 the recommendations regarding the Wyle Laboratories.

1 So, I have got Brian Hancock who is our director of
2 Testing and Certification at the EAC.

3 And welcome, Brian. Once again, we
4 appreciate it.

5 MR. HANCOCK: Thank you, Madam Chair,
6 Commissioners. Good morning.

7 As you noted, I am going to represent
8 this morning's staff recommendations for the
9 accreditation of Wyle Laboratories.

10 Pursuant to the requirements of the Help
11 America Vote Act, on September 14, 2007, EAC received
12 a recommendation from the acting director of the
13 National Institute of Standards and Technology, NIST,
14 to accredit Wyle Laboratories, Incorporated of
15 Huntsville, Alabama under our voting system
16 certification and laboratory accreditation program.

17 Wyle was recommended under a scope of
18 accreditation that would allow them to test voting
19 systems of both the 2002 voting system standards as
20 well as the 2005 voluntary voting system guidelines.

21 before taking the HAVA mandated vote to
22 accredit these labs, the EAC contacted Wyle and

1 required that they submit a letter of application to
2 the EAC to provide information, agree to program
3 requirements, and submit a signed certification of
4 laboratory conditions and practices.

5 Wyle has submitted all requested
6 information, and the information has been reviewed by
7 the EAC staff and found to be both complete and
8 sufficient.

9 Therefore, my recommendation is noting
10 that the laboratory has undergone successful
11 assessments from the National Voluntary Laboratory
12 Accreditation Program of NIST of their technical and
13 management capabilities, and they have submitted all
14 information required by the Election Assistance
15 Commission the staff recommends that, one, the
16 commission vote to accredit Wyle Laboratories, Inc.

17 of Huntsville, Alabama as an EAC voting system test

18 laboratory pursuant to the requirements of Section

19 231(b) of the Help America Vote Act.

20 Two, the Commission causes EAC staff to

21 forward to Wyle a certificate of accreditation as an

22 EAC voting system test laboratory noting their scope

1 of accreditation and their successful assessment by
2 NVLAP.

3 Three, that the Commission caused the EAC
4 staff to post the certificate of accreditation, the
5 laboratory letter of application, and the signed
6 certificate of laboratory conditions and practices on
7 the EAC web site along with the other laboratories
8 that we currently have voted to accredit.

9 CHAIR DAVIDSON: Commission questions for
10 Brian?

11 I have one myself. I would like for you
12 to give a little information to the Commission and
13 the public of exactly in the registration that they
14 have to give us, does that include where their
15 manufacturing plants are established? Does that go
16 into that area?

17 MR. HANCOCK: We do have that for our
18 voting system manufacturer. That is part of what
19 they have to give us. The labs give us information
20 on their internal procedures.

21 We're especially focused on their
22 conflict of interest procedures, what types of

1 enforcement mechanisms that the lab has to in fact
2 enforce the procedures that they tell us they have
3 and those type of things.

4 Specifically things that the NVLAP
5 program does not specifically look at.

6 CHAIR DAVIDSON: Okay. Anybody else have
7 questions?

8 COMMISSIONER HILLMAN: Yes.

9 CHAIR DAVIDSON: Commissioner Hillman.

10 COMMISSIONER HILLMAN: Brian, if the
11 Commission votes today to accept your recommendation
12 and approves Wyle what is the testing capacity? I
13 know labs test hardware, some software. Some both.
14 If we have those four, what will the testing capacity
15 be for us at that point?

16 MR. HANCOCK: The capacity for our

17 program will be quite large. In fact, it will be the
18 largest that its ever been. All the laboratories
19 that we accredit do have to have the capability to do
20 the important core testing themselves.

21 That includes hardware testing and
22 specific software testing. They are doing that.

1 They all also have the capability of working with
2 subcontracted laboratories, too, for specific testing
3 that they may or may not have the facilities to do on
4 site although most of them do frankly.

5 COMMISSIONER HILLMAN: Do any of the labs
6 have a specialty? That is, is any lab more
7 specialized in optical scan versus DRE or --

8 MR. HANCOCK: I don't believe in the
9 votings field they have specialties. I think in some
10 of their other business practices they may have
11 specialties. I think all of them are pretty equal in
12 testing both the DRE-type system as well as optical
13 scan systems.

14 COMMISSIONER HILLMAN: So, we have nine
15 manufacturers in the queue for testing?

16 MR. HANCOCK: Yes. That is right.

17 COMMISSIONER HILLMAN: After today if we

18 approve this recommendation, it will be four labs?

19 MR. HANCOCK: That is correct.

20 COMMISSIONER HILLMAN: Does that help to

21 move more quickly, we hope, the testing and

22 accreditation?

1 MR. HANCOCK: Yes. We would hope. There
2 is always the fact that we don't really have control
3 over who the manufacturers go to because they can go
4 to anyone of our --

5 COMMISSIONER HILLMAN: So, all nine can
6 go to one lab?

7 MR. HANCOCK: That wouldn't be smart
8 but --

9 COMMISSIONER HILLMAN: They could?

10 MR. HANCOCK: They could. Yes. But --

11 COMMISSIONER HILLMAN: And we couldn't do
12 anything about that?

13 MR. HANCOCK: We could suggest they
14 spread out their business, but probably we don't have
15 the authority to -- Counsel might want to say
16 something about that?

17 But we don't have the authority to direct

18 them to certain labs currently.

19 COMMISSIONER HILLMAN: The reason I raise

20 this and I would be interested if you have any

21 insight on that because I know election officials are

22 anxious about the ability of new components or new

1 systems to be tested in a timely enough manner to
2 allow them to be functional and use them in 2008
3 election cycle.

4 I would just hope that we aren't going to
5 see a backlog because manufacturers are favoring one
6 lab over another.

7 MR. GILMOUR: I think ultimately what Mr.
8 Hancock said is accurate. I think interestingly
9 enough states would come along and say timely to take
10 an active role in looking at what the manufacturers
11 are doing and basically saying here are deadlines.
12 We educated the EAC process.

13 I think would help them. As a customer,
14 they have a lot to say in the process.

15 MR. HANCOCK: You are correct. Right now
16 we do have three accredited labs but as far as I'm

17 aware only two of them have voting systems. Of those

18 nine, only two of them are doing the testing. One

19 does not have any engagements that I am aware of

20 currently.

21 COMMISSIONER HILLMAN: Do we monitor?

22 Are we able to monitor which manufacturers are going

1 to which labs? How long the process is taking?

2 MR. HANCOCK: Yes. When the
3 manufacturers' apply, they -- part of their
4 application package is which test lab they are using.

5 COMMISSIONER HILLMAN: Thank you.

6 CHAIR DAVIDSON: Commissioner Rodriguez.

7 COMMISSIONER RODRIGUEZ: Thank you, Madam
8 Chair. Mr. Hancock, later in the meeting I was going
9 to propose a new policy for the Commission, but I am
10 going to test it out on you.

11 And that is do you think it would be in
12 the public's interest to be able to comment on the
13 Commission action before we take it with respect to
14 this type of ownership?

15 I'm thinking because we have not
16 perfected how we post our briefings on our web site

17 make them available to the public if we had a lag
18 between the time of an issue and the time we vote on
19 an issue in the interest of making the public
20 completely aware of what we are doing.

21 Do you think this Commission action might
22 benefit from that process?

1 MR. HANCOCK: I'm not sure of the
2 benefit. It would certainly increase the
3 transparency somewhat. There is no question about
4 that.

5 You know, I think that the labs having
6 gone through NVLAP have been very thoroughly vented,
7 and it's an extremely technical and specific
8 information. More so than even most computer
9 scientist or certainly members of the public would
10 have knowledge of because they need to meet very
11 specific requirements and very specific ISO standards
12 to do this.

13 I don't know. I have not thought of it
14 fully, but.

15 COMMISSIONER RODRIGUEZ: In the absence
16 of a policy, I would be willing to vote on this

17 today. I would like you to think about it.

18 MR. HANCOCK: Okay. I will do that.

19 CHAIR DAVIDSON: I know that at our prior

20 meeting in September it was discussed that we had

21 received a letter. It was in our report of the

22 directors and that we did receive the letter.

1 Do we post those letters immediately on

2 the web when we receive that from --

3 MR. HANCOCK: I don't think they are

4 posted immediately. I think what will happen is

5 when -- if the Commission votes to approve Wyle today

6 that letter will be posted along with their other

7 information.

8 But that would certainly be an option

9 when we receive the recommendation from NIST there is

10 some lag time while we do our investigation and due

11 diligence into the laboratory. Maybe that could work

12 into the time frame, Commissioner, that you

13 suggested.

14 CHAIR DAVIDSON: That would make it more

15 transparent even in that process what I was thinking.

16 Okay. Yes.

17 MR. WILKEY: Just to clarity. The actual
18 NVLAP report and our report of their responses to the
19 work we do is all posted?

20 MR. HANCOCK: Right. NVLAP actually
21 posts their assessment reviews on the NVLAP web site.
22 That information is available to the public. Again,

1 our information will be as --

2 MR. WILKEY: And I think what will be to
3 the benefit of the audience anyone who is really
4 interested in this subject NVLAP also publishes their
5 handbook and all of the requirements that they have
6 to meet on their web site.

7 It's a very, very comprehensive document.
8 It took me a long while to get through it a long time
9 ago. If you know anything about NVLAP, NVLAP is an
10 internationally recognized accreditation program that
11 has been under NIST for many years.

12 I know they do work all around the world
13 in accrediting laboratories for all kinds of things.
14 So, I would urge anyone who has any interest in this
15 I think it would be very interesting for them to see
16 the kind of criteria that these laboratories have to

17 meet to get accredited, to get to that first stage.

18 Thank you.

19 MR. HANCOCK: I agree.

20 CHAIR DAVIDSON: Any other questions?

21 COMMISSIONER HILLMAN: I do. Brian, is

22 any part of the assessment of the laboratories before

1 accreditation does any part of that process include
2 looking at the company with respect to how it's
3 operations impact the environment of the community
4 it's in or what kind of community citizen the
5 corporation is with it's activities?

6 I know the second one is probably harder
7 to gauge. But the first one with respect to any of
8 its operations negatively or questionably impact the
9 environment.

10 MR. HANCOCK: I actually do not know the
11 answer to that question. I don't believe looking at
12 the NVLAP handbooks that that would be something they
13 would look into.

14 Perhaps that would be something the
15 Environmental Protection Agency would look into
16 because I do know a lot of these labs in other areas

17 do explosives and other things that certainly would

18 impact the environment.

19 So, I would suspect they would be looked

20 at by other government agencies, but I don't know

21 that for a fact.

22 MR. GILMOUR: There are statutes that

1 deal with these issues in other areas. Construction,
2 government program changes that looks at those
3 things.

4 That would not be relative to actual
5 certification or accreditation of an existing
6 program. I'm not sure you are talking about the
7 environment in the sense of community or not.

8 COMMISSIONER HILLMAN: Well, the
9 community lives in the environment. I am wondering
10 how EAC does its due diligence to make sure that the
11 particular laboratory is not one that's on some list
12 of companies offending the environment because toxic
13 this, or inappropriate dumping of, or whatever other
14 kind of environmental impact its operations might
15 have.

16 I would sort of forward that up to see if

17 there is some way EAC can at least do its due

18 diligence to make sure we are aware if there are any

19 issues on these labs and vendors for that matter.

20 MR. GILMOUR: The only matter we require

21 them to inform us is litigation. That might be a

22 tool.

1 MR. HANCOCK: That is true. If they were
2 sued for some environmental issue, we would know
3 that. Yes.

4 COMMISSIONER HILLMAN: Thank you.

5 CHAIR DAVIDSON: All right. I think I'm
6 ready to entertain a motion on the recommendation
7 that Brian Hancock has given us on the laboratory, on
8 Wyle laboratory I should say.

9 COMMISSIONER RODRIGUEZ: I move adoption
10 or make the motion.

11 COMMISSIONER HUNTER: Second.

12 CHAIR DAVIDSON: We have a motion and a
13 second on accepting the recommendation that is Mr.
14 Hancock has stated and which will mean that we would
15 move forward with one more laboratory.

16 So, all of those in favor say I aye?

17 (All Ayes)

18 Opposed? The motion carries. We have

19 one more laboratory. Thank you, Brian.

20 MR. HANCOCK: Thank you, Madam Chair.

21 CHAIR DAVIDSON: Okay. Next we will move

22 Edgardo up front, and while you're coming I'll start

1 a little bit.

2 HAVA transferred the responsibilities
3 surrounding the National Voter Registration Act from
4 the Federal Election Commission to the EAC. One of
5 those responsibilities is creating and maintaining
6 the national voter registration form. That's what
7 we're here to discuss today, the process surrounding
8 the maintenance of the form.

9 And to be perfectly frank, we have got
10 some catch-up to do. Voters all over the country use
11 this form, and maintaining it must be a top priority
12 for the EAC.

13 At the last public meeting, the
14 Commission voted to enter a public comment period
15 regarding whether we should transfer the regulations
16 from FEC to the EAC. However in the meantime staff

17 recommendations -- recommends adopting a temporary

18 process, a temporary process -- I want to repeat that

19 -- for the updating of the form.

20 For those of you that are following

21 along, we posted the staff recommendations on our web

22 site Tuesday, and we have copies in the front area if

1 would you like to have copies.

2 Also, Commissioner Hunter has submitted a
3 recommendation in which -- that is also available out
4 front.

5 So, now I would like to have Edgardo
6 Cortes. He is the election research specialist to
7 walk us through the recommendations.

8 MR. CORTES: Thank you, Madam Chair.
9 Good morning, Commissioners. As you mentioned, the
10 HAVA transferred responsibilities under the NVRA from
11 the FEC to the EAC.

12 NVRA requires the EAC to develop and
13 maintain the voter registration form, federal
14 election, that must be used and accepted by all
15 covered jurisdictions.

16 To accomplish this task, the EAC was

17 given the authority to create regulations to

18 implement federal voter registration form.

19 Not only does the EAC have a

20 responsibility to issue regulations regarding the

21 form, but it muscles also have written internal

22 procedures that address how to handle requests for

1 changes to the form in a uniform and transparent
2 manner.

3 However, the absence of formal
4 regulations and written internal policies and
5 procedures does not relieve EAC of it's obligations
6 under NVRA.

7 Since the creation of the EAC, the staff
8 has worked in a manner consistent with the FEC
9 experience to make changes to the state instructions
10 section of the form.

11 Just to give you a little background on
12 that, the FEC commissioners had adopted a policy that
13 allowed staff to make changes to the state
14 instructions of the federal form consistent with
15 changes in state law in the six area that FEC
16 regulations -- where FEC regulations require state

17 information.

18 These six areas were state voter

19 eligibility requirements, a voter identification

20 number required by the state, whether the state

21 required a declaration of race or ethnicity, the

22 state deadline for accepting border registration

1 applications, and the state election office address

2 where applications should be mailed.

3 Any other requests for changes were to be

4 sent to the FEC commissioners for a formal vote of

5 the Commission in order to make the requested

6 changes.

7 So, this gives you an idea of the

8 framework that we have used up until this point for

9 making changes to the state instructions section of

10 the federal form.

11 During last month's public meeting, I

12 recommended that the Commission administratively

13 transfer FEC's regulations concerning NVRA to the EAC

14 and would then begin the rule-making process once

15 that transfer is complete.

16 I also recommended that sufficient

17 resources be allocated to carry out these steps.

18 This month I am here to recommend that in

19 the meantime we -- the EAC adopt a temporary policy

20 to insure that all responses to state requests are

21 timely, uniformly addressed or uniformly and

22 transparently addressed.

1 The purpose of the staff recommendation
2 the staff recommended temporary policy is three-fold.
3 The first is to assist EAC in maintaining an updated
4 federal voter registration form, to insure that our
5 requests to be treated in the same manner, and to
6 make sure the public is informed about how EAC
7 decisions are made regarding changes to the federal
8 form. We divided the policy into two major sections
9 that reflects the decision-making process.

10 I know you received my written
11 recommendation earlier this week and that you will be
12 discussing it in a few minutes. So, I will just
13 provide a brief overview to allow time for
14 discussion. I will be available for questions during
15 that discussion.

16 The two major parts are the rules and

17 responsibilities section, and it essentially
18 describes who makes what decisions and where the
19 responsibilities lie. And then the procedure.

20 Now, the procedure section is the
21 lengthiest part of the document. There's five
22 subsections that detail the entire decision-making

1 process.

2 Those five subsections are receiving a
3 request for changes, the actual processing, the
4 decision authority review, the issuance of a
5 decision, and request for reconsideration.

6 Now, based on the recent actions of the
7 commissioners to move forward in fulfilling EAC's
8 NVRA responsibilities, the staff believes that it
9 will now be inappropriate to continue our involvement
10 in making changes to the federal form without formal
11 internal procedure adopted by the Commissioners.

12 We look forward to starting this
13 thorough, transparent, comprehensive process to meet
14 our duties under NVRA, and I will be happy to answer
15 any questions about the statement or the
16 recommendation before you.

17 CHAIR DAVIDSON: Thank you, Edgardo. I

18 want to thank the staff for all the work that they've

19 done on this.

20 Now, I would like to move forward by

21 discussing the entire recommendation that the staff

22 has presented.

1 Does any Commissioner have motions or are
2 ready to vote? I would ask them to wait until we go
3 through the entire recommendation.

4 I think that public would be best served
5 and also us as Commissioners in trying to make
6 decisions if we have heard the full debate first
7 before trying to make any decisions.

8 Then also Commissioner Hunter has brought
9 our recommendations forward, and after we go through
10 the staffs', I would like to give her an opportunity
11 so the Commissioners can ask her questions as we move
12 forward and walk through all the presentations.

13 You just heard the staff recommendations
14 from Edgardo. So, let's go ahead and get started on
15 the roles and responsibilities section.

16 In this section, the staff describes the

17 responsibilities of everyone involved in the process

18 including the Commissioners. And I would like to

19 open it up and discuss that area.

20 Commissioner Rodriguez.

21 COMMISSIONER RODRIGUEZ: Thank you, Madam

22 Chair. I know you laid out a specific way for us to

1 proceed, but I would like to ask a couple of
2 questions first, if that's okay.

3 CHAIR DAVIDSON: That's fine.

4 COMMISSIONER RODRIGUEZ: Mr. Cortes, I
5 don't know if you heard me ask Mr. Hancock a couple
6 of questions about the public's interest in working
7 with the Commission, but we posted your briefing
8 Monday or Tuesday of this week, and that's because
9 it's probably the Commissioners' fault because you
10 needed clarification.

11 But I wonder if it's your opinion that it
12 would be in the public's interest to have our
13 briefings more than a day or two before a Commission
14 meeting so that they can really review them and
15 provide comments.

16 MR. CORTES: I do certainly think the

17 earlier information is available the better

18 obviously. It gives everyone more chance to review.

19 I do think sometimes that's unfortunately not

20 possible given the time frames we are working with.

21 And we believe that this is a very

22 important policy that will allow us to move forward

1 in a transparent manner and to let the public see how
2 the process works.

3 I think until now we have been doing
4 things in a consistent manner, but I think the public
5 has not been clear on how that process works. I
6 think this will allow the public to understand as we
7 move forward how those decisions are made.

8 COMMISSIONER RODRIGUEZ: Thank you.

9 CHAIR DAVIDSON: All right. Let's go
10 back. Is there any discussion at all on the first
11 section? All right. Moving forward then. The
12 second one I would like to start.

13 This is one of the five. The request for
14 change is the first step. And it is just an
15 acknowledgment we have received a request from the
16 state.

17 I think it's pretty straightforward, but

18 is there any comments or discussions on that

19 subsection? All right.

20 Proceeding right ahead. Processing.

21 Describing how the request will be handled by the

22 staff. Any questions?

1 COMMISSIONER RODRIGUEZ: Well, there is
2 another point. Last month Mr. Cortes -- Thank you,
3 Madam Chair.

4 CHAIR DAVIDSON: Not a problem.

5 COMMISSIONER RODRIGUEZ: Last month Mr.
6 Cortes talked about staffing requirements in the area
7 of agency. We have not discussed that, but I don't
8 think any of these procedures can be accomplished
9 under any of these sections without having the
10 necessary staff.

11 Last night we found out in a very late
12 hour that the EAC adopted the policy with respect to
13 the NVRA, and I'm not mad at anybody about the fact
14 that we didn't know about it. But it really very
15 clearly drove home to me the need and probably all us
16 for more support in this area.

17 And so we can adopt a procedure that very
18 specifically accomplishes what we need to. But we
19 can't implement it without the necessary staff.

20 CHAIR DAVIDSON: Thank you. Commissioner
21 Hillman?

22 COMMISSIONER HILLMAN: I do. I have a

1 question. I am not sure if it goes to Edgardo or to
2 our general counsel. So, whichever of you or both of
3 you feel you should comment.

4 It goes to under the classification
5 section the definition of voter eligibility
6 requirements and procedural matters. I think
7 administrative matters is pretty straightforward.
8 We're talking about an address, a mailing address.

9 But my question goes to the
10 classification of items that are considered
11 eligibility requirements by the states in their state
12 law and whether or not the definitions presented here
13 reflect those categories because it is my
14 understanding that in some instances states pass laws
15 and specifically classify them as eligibility. And
16 this is with respect to voter registration.

17 And in other cases, items are passed or
18 whether by law or through regulatory procedure and
19 are not specifically classified as eligibility and
20 therefore it might leave it to interpretation as to
21 whether it's procedure or eligibility.
22 I am wondering how EAC whether today or

1 in this next several months we are really making
2 process. How we wrap our arms around that.

3 MR. CORTES: I guess I'll talk pretty
4 broadly in terms of eligibility requirements. I
5 think the best way to sum it up is that the way we
6 considered this is the eligibility is requirement is
7 what a person has to be in order to register to vote,
8 not what they have to do to prove it or to show that
9 they are whatever that thing is.

10 So, traditionally those requirements have
11 been the age. You have to be over a certain age in
12 order to vote. All 50 states currently have
13 citizenship. You have to be a U.S. citizen. States
14 have residency requirements in terms of how long you
15 must have been a resident of the state.

16 And some states if you have been declared

17 mentally incompetent you are not eligible to register

18 to vote. So, I think it's something that -- it's a

19 very fine line.

20 It's difficult for people to grasp

21 sometimes the difference between that and a procedure

22 for proving or showing that you are a certain thing.

1 MR. GILMOUR: If I may, as well --

2 COMMISSIONER HILLMAN: Let me point out

3 one thing. That is in the definition of eligibility

4 requirements, the last two words and oaths. I don't

5 know how an oath is what you are and why an oath

6 isn't considered a procedure.

7 MR. GILMOUR: Essentially this mirrors

8 the NVRA. And the NVRA in fact in this particular

9 provision you're talking about, and the NVRA, of

10 course, mirrors the Constitutional amendment as noted

11 actually in here in a later section which essentially

12 reserve rights to choose voter requirements,

13 eligibility requirements to the state.

14 CHAIR DAVIDSON: Will you pull your mike

15 up a little bit. We're having trouble hearing.

16 Thank you.

17 MR. GILMOUR: This is where it comes
18 from. It comes from the Constitution. That's
19 reflected in the NVRA. This issue is not completely
20 novel. I believe states essentially technically the
21 NVRA make claims that voter registration is a voting
22 requirement. In fact some states it's listed that

1 way.

2 And that was not upheld. The idea here
3 is if all the processes -- all the processing
4 including everything that's required and not required
5 on the federal form is considered to be a voting
6 requirement frankly the NVRA itself is not
7 Constitutional because the NVRA spells out processes
8 of how you prove citizenship, how you prove various
9 different things.

10 If you are checking the box, if you're at
11 the station, if that itself is a voting requirement,
12 then the United States Government does not have the
13 authority in my opinion to issue it.

14 There has to be a distinguishing line
15 between what is a voting eligibility requirement.
16 Traditionally we know what they are. They are

17 limited to five or six things, and I think you also

18 have written in here traditionally.

19 There has not been that much change in

20 that area. The remainder of these issues is the

21 manner or, as the Constitution used the term, or the

22 procedure in which these are demonstrated.

1 That is how we split it to make sense of
2 what the NVRA says. The NVRA specifically says you
3 must have the state registration requirements and
4 they have to be on the form.

5 Does that mean that every single statute
6 passed by the states that relates on registration is
7 on voter registration requirements? If that is the
8 case, the rest of the NVRA is in question because it
9 talks about things that are prohibited and things
10 that are allowed in a very limited context.

11 So, we try to reflect essentially what we
12 believe the NVRA is getting at with that term. That
13 is what we did. Obviously the decision belongs to
14 the Commissioners, but it was an honest attempt on
15 our part to reflect what we believe the requirements
16 of the NVRA were and the requirements of the

17 Constitution.

18 We believe that this particular issue of

19 what the requirements are for the United States to

20 votes. The decision belongs to the states.

21 COMMISSIONER HILLMAN: So, it would be

22 appropriate to say under an eligibility requirement

1 it is required that you be 18, you be a citizen, you
2 be a resident of the jurisdiction where are you
3 registering to vote, you be not mentally
4 incapacitated or however versus saying it is required
5 that you mail your form to this place, or that you
6 provide proof of identification, or that you do a
7 specific thing.

8 MR. GILMOUR: Well, essentially --

9 COMMISSIONER HILLMAN: That you be a
10 certain thing and that procedure would be that you do
11 a certain thing.

12 MR. GILMOUR: Certainly, the voting
13 requirements and ultimately all of registration is
14 the documentation of those requirements. That's
15 essential.

16 COMMISSIONER HILLMAN: If this is a

17 reflection of NVRA -- and I must say that I didn't

18 previously focus on this as being in the NVRA -- what

19 is meant by an oath under the eligibility

20 requirements? What are we talking about?

21 MR. GILMOUR: Many state statutes have

22 essentially a section that lists their requirements

1 for eligibility. I will assume you can hear me.

2 There are states that require an oath.

3 COMMISSIONER HILLMAN: How can you be an

4 oath? I am not going to belabour the point. I know

5 how you can be 18. I know how you can be a citizen.

6 I know how you can be not a felon. How can you be an

7 oath?

8 That would be for a later time, but

9 that's a big.

10 MR. GILMOUR: It's you could have made an

11 oath.

12 COMMISSIONER HILLMAN: And I could have

13 made a mailing and I could have made showing of my

14 identification. Do you understand?

15 MR. GILMOUR: I understand.

16 COMMISSIONER HILLMAN: Some are human

17 characteristics, and some of it is procedural

18 characteristics, and I don't see how an oath is an

19 eligibility.

20 COMMISSIONER RODRIGUEZ: I have an

21 opinion. I am not a lawyer, but traditionally most

22 states have a sworn oath that affirms that you are

1 who you are, that you meet all the eligibility
2 requirements. And it's usually if you lie in this
3 oath, it is punishable by law.

4 So, I can see it is required as a
5 requirement.

6 COMMISSIONER HILLMAN: Couldn't it be a
7 procedure?

8 MR. CORTES: I think we are talking about
9 two different types of oaths. Some states require
10 you essentially to take an oath that affirms your --
11 for lack of a better way to put it -- your loyalty to
12 the state.

13 So, it's not that you are approving
14 something. It's essentially when -- as federal
15 employees when we are sworn in to our position we
16 take an oath to uphold the Constitution and to do

17 certain things.

18 That's the sort of oath that we're

19 talking about here, not the sort of oath, for

20 instance, on form where you sign saying you have done

21 all these things. So, we are talking about two

22 distinct kinds of --

1 MR. GILMOUR: Affirming your loyalty to
2 the state.

3 CHAIR DAVIDSON: A lot of that is self
4 affirmation oaths. You don't have to have a witness
5 on most cases.

6 MR. GILMOUR: That is the separate issue
7 and deals -- there is another section in the NVRA
8 that precludes formal attestations of documents.

9 CHAIR DAVIDSON: Commissioner Hunter.

10 COMMISSIONER HUNTER: Thank you for the
11 recommendation. I have to respectfully disagree with
12 our general counsel, and this wont be a surprise to
13 them and with Mr. Cortes.

14 This is just one of the major problems
15 that I have with the proposal that the staff has put
16 forth today. I respectfully disagree. I don't find

17 any place in the NVRA or any of the relative case law

18 that separates procedures and eligibility

19 requirements.

20 I think it's a distinction without a

21 difference. Again, I cannot find any backup for

22 separating those two things out and for coming up

1 with different procedures for the two.

2 Just to read directly from NVRA Section
3 1973 GG7 which is cited by many courts including
4 recently the Ninth Circuit Court of Appeals and the
5 District Court in Arizona, the mail voter
6 registration form developed under subsection 82 of
7 this section may require only such identifying
8 information including the signature of the applicant
9 and other information including data relating to
10 previous registration by the applicant as is
11 necessary to enable the appropriate state election
12 official to assess the eligibility of the applicant
13 and to administer voter registration in other parts
14 of the election process.

15 So, it's very clear that the form can
16 have not only whatever the state law has in their

17 eligibility section of their law but whatever the

18 states deems necessary to establish eligibility.

19 I don't know how it's read any other way.

20 And I think once again, if this policy were adopted

21 -- and I clearly cannot support it -- the EAC would

22 once again be overstepping its authority in this

1 context.

2 We have no authority to regulate the
3 eligibility or the procedures regarding this issue.

4 Thank you.

5 CHAIR DAVIDSON: Any other discussion on
6 this section? Questions? Okay. Moving forward.
7 Decision authority review. Any questions? I think
8 it's on page three and goes on to page four.

9 I have one that might start the
10 conversation. On page four, number three small. The
11 three "I"s or whatever you want to call it. The
12 third one down.

13 The request is inconsistent with the Help
14 America Vote Act or any other federal statute or
15 Constitution.

16 I want you to explain to me that is only

17 to federal law. You are not trying to get into
18 specific state laws, whether they meet the
19 Constitutionality. You're not judging the state.

20 MR. CORTES: Correct. This is in
21 reference together to U.S. Constitution, not to any
22 particular state constitution. We feel that as a

1 federal agency, a form that we put out at minimum has
2 to comply with all the requirements of the U.S.
3 Constitution and any federal laws applicable to voter
4 registration.

5 And we are talking about a voter
6 registration form, the only issue dealing with voter
7 registration. So, yes. It's in reference to federal
8 statutes and the Constitution.

9 MR. GILMOUR: That's exactly right. We do
10 not claim to have any authorization under state law
11 or state constitutions. All we are attempting to do
12 is to apply the federal requirements.

13 And to use the example of the various
14 statutes that Commissioner Hunter. We would look at
15 that section that she just talked about, and this is
16 probably the most common section historically that

17 the FEC dealt with where states have requested
18 information or have statutes that require information
19 on the form that are not required that have nothing
20 to do with voter registration.

21 That is where we would come in and say it
22 does not meet the requirements of NVRA and B1. For

1 example, you asked for something about --

2 An example FEC would be naturalization.

3 That wanted information about naturalization but not

4 about other things. I don't recall whether the NVRA

5 made the right decision on that, but that is an

6 example of an issue that is brought up, whether the

7 naturalization information is information required.

8 The idea was whether you're a citizen or

9 not, whether you're a citizen or naturalization or

10 you are not.

11 COMMISSIONER HUNTER: I have not studied

12 that specific example that you made, but weren't they

13 determining whether or not to add that information on

14 the first part of the federal form and not on the

15 state instructions?

16 Wasn't the FEC determining whether or not

17 to require naturalization information on the first

18 part of the federal form?

19 MR. GILMOUR: I don't specifically

20 recall, but it was in the Federal Register notice.

21 When the original rules went out and the rules went

22 out -- and I don't even know when the rules went out

1 there was a form in existence that probably come --
2 technically it would have to come after the rules
3 because the rule specified what the form would look
4 like and after that they create the form.

5 But the rule did create an status of
6 exception. I don't know if it said so specifically,
7 but the FEC did not allow the -- nowhere in the FEC
8 form be it in the general instructions or the state
9 specific instructions did they allow for the request
10 of naturalization numbers or whether or not you are
11 a citizen through naturalization or by birth.

12 Was the comment a rule making? I don't
13 recall whether it specified which part of the form
14 they didn't want it on. It may not have necessarily
15 been the discussion. The policy discussion as to why
16 something is not on the form they do not specify what

17 part of the form which at the time didn't officially

18 exist.

19 Which part of the form it was not

20 included on, if that makes sense. I don't recall

21 specifically.

22 COMMISSIONER HUNTER: I think it would be

1 a different analysis. I don't know if there was a
2 state requesting that information. So, we don't have
3 all the facts.

4 But FEC stated in its FEC guides
5 including the NVRA that it does not have the legal
6 authority to either interpret the act meaning NVRA or
7 to determine whether this or that procedure meets the
8 requirements of the Act. Indeed the similar portion
9 of the Act is specifically assigned to the Department
10 of Justice.

11 CHAIR DAVIDSON: Okay. Any other
12 questions or concerns about that area of number
13 three?

14 I also want to make sure that -- Number
15 two is a problem for me. I think that when it says
16 the procedures are unduly compromised or

17 significantly burden the voters -- excuse me --

18 complicate or specifically burden voters I really

19 see in taking that step that is a great area.

20 I don't know how -- I don't know how in

21 the world that we would always -- You know, there's

22 no way to know. And I just see that that is a real

1 gray area for all of us.

2 Yes.

3 COMMISSIONER RODRIGUEZ: Thank you, Madam

4 Chair. I will ask Mr. Gilmour where that language

5 comes from.

6 MR. GILMOUR: The purpose of that

7 language -- The purpose of this entire document would

8 be to provide discussion starting point for

9 Commissioners that we attempted to provide everyone

10 an opportunity to have a perspective in it.

11 In other words, compromise that didn't

12 represent one viewpoint. We know there are probably

13 four viewpoints certainly.

14 And certainly this is late to the NVRA,

15 but basically it has for your consideration and for

16 your consideration the concept that something can be

17 formally -- formally not prohibited by the NVRA but

18 prohibited -- essentially inconsistent with the

19 purposes of the NVRA.

20 The question posed in putting this in

21 here is a consideration of whether that is an

22 appropriate consideration for the Commissioners.

1 Frankly, it was put in there essentially
2 so that the matter could be discussed and debated. I
3 assume that there might have been a Commissioner who
4 had that viewpoint and I didn't want to omit the
5 possibility of the discussion on that.

6 The other two dealing specifically with
7 federal law. They say the EAC has a federal form and
8 we are going to issue the form with a federal which
9 gives us authority. And that one I will suggest goes
10 further and I believe correctly point out that is
11 probably the area where most discussion will take
12 place. With respect to that, we just wanted to be
13 fair in framing the functions.

14 CHAIR DAVIDSON: Commissioner Hillman?

15 COMMISSIONER HILLMAN: I can think of an
16 example myself that if a state required the mail form

17 to be returned by certified mail, or returned

18 receipt, or some other procedure that required the

19 voter to spend extra money.

20 Go to a post office, fill out a form.

21 For me personally, I didn't think that would

22 complicated -- unduly complicated and of significance

1 to a voter. I don't know that any state requires
2 that, but that's not outside the realm of
3 possibility.

4 CHAIR DAVIDSON: You know, I'm coming
5 from the state and you will have to excuse me because
6 there is really -- coming from the state and being in
7 the position that I held, I'm very strong on state
8 rights.

9 And immediately after something is passed
10 or an initiative is passed that the voters feel that
11 is undue in the process or, you know, they are
12 taking -- legislature has taken steps that shouldn't
13 be, you are in court immediately.

14 I think that things that like that if
15 it's settled at the state level and that would I feel
16 be settled at the state level and there wouldn't be

17 an issue that we would be dealing with.

18 Can you always guarantee that? But we're

19 going to always been in a position with that in there

20 that we're going to possibly be in disagreement.

21 COMMISSIONER HILLMAN: Except it is a

22 federal form that the EAC has responsibility for.

1 So, I would think if a state is making it burdensome
2 for a citizen to return a federal form that we would
3 have a direct interest in it.

4 And it could be done through an
5 administrative procedure that may not come to light
6 until the EAC makes it public information.

7 So, it might not get resolved at the
8 state level before we have to take action.

9 COMMISSIONER HUNTER: I think both of
10 your points bring out the same thing we talked about
11 at the last hearing which is what is the authority of
12 the EAC over the form.

13 If you believe that the EAC has that kind
14 of authority, you might support that kind of concept.
15 But if you don't, then you wouldn't. That is the
16 crux of the whole thing is how much authority does

17 the EAC have.

18 As I stated last month, my view is that

19 it's clearly -- purely an administrative role of

20 trying to put all these different state laws into one

21 form that everybody can send in, and the state

22 instructions allow for the fact that there are 50

1 states and many of them have eligibility
2 requirements. It's a different view of what the
3 authority is of the EAC.

4 CHAIR DAVIDSON: Commissioner Rodriguez.

5 COMMISSIONER RODRIGUEZ: Thank you, Madam

6 Chair. I will go on record to say if the state
7 established, as some have in the past, something like
8 a poll tax or literacy test I would hope that the EAC
9 would have some discretion over whether or not we
10 amended our form to include those types of
11 requirements before they are approved by the courts.

12 CHAIR DAVIDSON: This is a question for
13 the staff. But wouldn't those examples and I know
14 they were just examples. So but isn't that
15 underneath the Constitution of the United States, no
16 poll tax?

17 COMMISSIONER RODRIGUEZ: Well, Madam

18 Chair, it states past things in my opinion are

19 unconstitutional all the time. In my own state

20 coming from the State of Colorado, for example, and

21 until they are resolved by The Court.

22 COMMISSIONER HUNTER: Until they are

1 overturned by The Court. Unless and until they are
2 overturned by a court, it's good law.

3 CHAIR DAVIDSON: Or if there is some type
4 of action that says you can't move forward until you
5 go through the whole process.

6 COMMISSIONER HUNTER: An injunctive.

7 CHAIR DAVIDSON: Okay. Any other
8 questions in this section? We're just about through
9 this one and we will all take a break.

10 The next is the issuance of a decision.

11 Any questions for the staff in that area or
12 discussion for all of us?

13 Moving forward, the request for
14 reconsideration. What we will do is take -- start at
15 15 after, and then we'll go into Commissioner's plan,
16 her recommendation that she had.

17 **COMMISSIONER RODRIGUEZ:** Before we break,

18 Madam Chair, if I could refine my point. States pass

19 crazy initiatives all the time. Colorado, for

20 example.

21 But I don't think the Federal Government

22 has ever comported to what the State of Colorado has

1 passed. I could be wrong. I don't recall if the
2 Federal Government has ever amended their practices
3 based on something that the voters or the legislature
4 of the State of Colorado passed. Thank you.

5 COMMISSIONER HILLMAN: Before we go on
6 break, I want to take this time to thank the EAC
7 staff for filtering the many different comments, and
8 concerns, and suggestions they have heard from
9 various Commissioners since our has meeting and
10 putting it together in this document to try to put in
11 one place the many options.

12 I appreciate that it was presented to us
13 as a document for discussion and debate and
14 consideration. I just appreciate in this short
15 period of time the amount of work they did and say
16 thank you.

17 CHAIR DAVIDSON: We will take a few

18 minute break and start back up at a quarter after.

19 (A short break was taken.)

20 THE COURT: I think everybody is back in

21 their places. I now will give you time, Commissioner

22 Hunter, to go through your proposal, your

1 recommendations.

2 COMMISSIONER HUNTER: Okay. Madam Chair

3 it was available out front so I don't need to read

4 it.

5 CHAIR DAVIDSON: I think available.

6 COMMISSIONER HILLMAN: I think you should

7 read it into the record.

8 COMMISSIONER HUNTER: I proposed an

9 alternate policy for handling state requests for

10 amendments to the state instructions portion of the

11 federal form.

12 And as is the case and correct me if I'm

13 wrong, Mr. Counselor, the proposal of the staff was

14 also to deal exclusively with the state instructions

15 portion of the federal form. Is that right?

16 MR GILMOUR: The recommendation was the

17 interim temporary recommendation, limited

18 recommendation to action for the state instructions,

19 but that was just our recommendation.

20 COMMISSIONER HUNTER: Right. And that is

21 what I did, as well. This is limited only to the

22 state instructions portion of the federal form. So,

1 I'll read it.

2 The EAC hereby authorizes the director of
3 elections administration to amend the "state
4 instructions portion of the Federal Mail Voter
5 Registration Act completion form when a state
6 government official notifies the EAC of a change in
7 the states mailing address."

8 For all other requests submitted by a
9 state government official to amend the state
10 instructions portion of the form the director of
11 election administration shall immediately notify the
12 executive director who shall immediately notify all
13 Commissioners of the request and shall call for a
14 vote of the Commission to consider the request.

15 The EAC shall vote to adopt the request
16 of the state to amend the state instructions portion

17 of the federal form to provided, one, the request
18 properly reflects the state's law and, two, the
19 request does not require the EAC to alter the voter
20 registration application.

21 The Commissioners shall vote -- That's
22 the end of it. So as I stated earlier, I don't

1 believe that the EAC has authority to not accept the
2 state instructions.

3 There are two copies caveats here. One
4 is that the instructions submitted by the state
5 properly reflects state instructions because I know
6 in the experience of the FEC and I am not quite sure
7 about the EAC but the FEC there were many examples of
8 states who submitted their instructions that just
9 didn't accurately reflect state law.

10 And that can probably be handled as soon
11 that it's sent in. But that's one way we wouldn't
12 have to include an incorrect state law.

13 Two, the request does not require the EAC
14 to alter the voter registration application. And
15 that part is that part of the federal form that is
16 the actual piece of paper that the voter mails in.

17 And, Chair Davidson, that second part was
18 as a result of the conversation with you. So if you
19 would like to elaborate on that portion, you feel
20 free to do so. But this in my view represents the
21 extent of the EAC authority particularly in the state
22 instructions portion of the form.

1 CHAIR DAVIDSON: And the reason why I
2 went to her many states have things in their law that
3 is not required on the form. I remembered back when
4 the FEC was going through the process, and rule
5 making, and we sent in letters and comments because
6 in our law we had even in identifying whether you
7 were a male or female because we take demographics on
8 that information and we felt it was very valuable to
9 actually mark whether you were a male or female. I
10 was going to say the opposite sex.

11 And they chose not to have that as one of
12 the boxes, and there's other states that have bigger
13 things in their law. But yet it's not to the
14 standards of what the FEC said needed to be on the
15 application itself.

16 If states had things like that and the

17 application had already gone through the bidding and
18 the process of having an application, I didn't think
19 that we could change an application constantly.

20 Obviously, that's what the purpose of the
21 individual form is all about is to have a form and
22 it's not changed except when really necessary, when

1 we really realize now to come up to the help America
2 vote requirements and everything like that. It's
3 just I didn't think the form should be changed
4 constantly.

5 COMMISSIONER HUNTER: If I could add,
6 because this policy only goes with the state
7 instructions portion if the state submitted to us a
8 requirement that a voter had to check a box required
9 regarding their gender that is not possible to do in
10 the state instructions.

11 So for this policy, that couldn't be done
12 in this case because for right now we're not
13 discussing changing the actual federal form, the
14 first page of the form. We are only talking about
15 amending the instructions.

16 CHAIR DAVIDSON: Commissioner Rodriguez.

17 COMMISSIONER RODRIGUEZ: Thank you, Madam

18 Chair. Are both of you proposing that we adopt this

19 without going through the Administrative Procedures

20 Act?

21 COMMISSIONER HUNTER: First of all, the

22 EAC when the authority was transferred from the FEC

1 to the EAC under HAVA to administer the federal form
2 the EAC made many changes to the state instruction
3 portion of the form and even took an action on the
4 request by Florida to make an amendment to the form.

5 So, the EAC has already been operating
6 under the procedure that Mr. Cortes described. The
7 FEC also did make changes to the federal form outside
8 of the public comment regulatory process.

9 Now, granted their changes were made as a
10 result of the requirements of HAVA specifically to
11 check the box. But the EAC has already been making
12 decisions on the federal form as Mr. Cortes
13 expressed.

14 So, we were told by counsel and I have
15 not researched the APA law question itself but we
16 were told by counsel this is perfectly permissible to

17 do under the APA.

18 MR. GILMOUR: We certainly follow the APA

19 and under the Sunshine Act. We're following the

20 Sunshine Act right now and the APA because this will

21 impact outside on the public.

22 CHAIR DAVIDSON: Any questions?

1 COMMISSIONER HILLMAN: Yes. I do have a
2 question. I'm having a hard time separating the
3 state instructions from the form. That is that this
4 proposed policy refers to the state instructions
5 portions of the mail voter registration application
6 form and later refers to the voter registration
7 application.

8 And I think, you know, we've -- it sounds
9 like it will be an interesting discussion for EAC as
10 to whether we would separate and say that the
11 application form is one thing and the state
12 instructions are another because from where I'm
13 sitting today changes to state instructions are
14 changes to the federal mail voter registration form.

15 And I don't know if it's called
16 application form. I don't think application is in

17 the technical name. If it is, it's one form. And

18 changes to the state instructions are changing the

19 form.

20 So, I am having a hard time separating we

21 can change this without saying we are changing the

22 form.

1 CHAIR DAVIDSON: You know, I think I can
2 either go ahead and discuss. I couldn't support
3 Commissioner Hunter's, the way she had written it.
4 As you see it before you, I gave you one that is
5 highlighted with yellow and some changes.

6 The changes come into place where it
7 talks about the registration application form. The
8 director of election administration shall immediately
9 notify the executive director who shall.

10 And then I took out the wording
11 immediately notify all Commissioners of the request
12 and who shall call for a vote of the Commission to
13 consider the request.

14 And also the EAC shall vote to adopt the
15 request of the state. I took those two and a half
16 lines out. And I added at the bottom that --

17 Well, what it would do is the director

18 who shall amend the state's instruction portion of

19 the federal mail registration form provided.

20 Number one, the request properly state

21 law and, number two, it does -- does not require the

22 ECA to alter the voter registration application in

1 understanding where Commissioner Hillman's coming
2 from also.

3 So, I did add then the Commissioners
4 shall vote on all appeals brought by the state
5 government officials of the executive director's
6 decisions. I forget my position here. I am sorry.

7 COMMISSIONER RODRIGUEZ: Thank you, Madam
8 Chair. I'm prepared to vote against both of these
9 today. However, I would agree if both of you or
10 either of you put them on the table would agree to
11 postpone a vote on them if we all agree to post them
12 on the web site and take public comment on them.

13 COMMISSIONER HUNTER: Are you saying,
14 Commissioner Rodriguez, that you may be able to
15 support one policy or another at some point in the
16 future?

17 COMMISSIONER RODRIGUEZ: That would be
18 the same as voting if I told you what I was going to
19 do. So, I am not prepared to do that today.

20 COMMISSIONER HUNTER: Well, I'm prepared
21 to vote today. So, I would like to call it to a
22 question.

1 COMMISSIONER HILLMAN: I don't think
2 there is any motion on the floor. There is no
3 motion.

4 MR. CORTES: Commissioner Hillman brought
5 up a point about the distinction between the separate
6 parts. I wanted to clarify where the staff was
7 coming from on our recommendation.

8 The FEC did define the national voter
9 registration form as the actual application portion
10 which is this page that you fill out with the
11 information, and accompanying general instructions,
12 and state specific instructions.

13 So, the FEC defined all those parts
14 together as the federal form. The reason we
15 distinguished and focused our policy on changes to
16 the state specific instruction has to do with the

17 Paperwork Reduction Act process.

18 And our understanding from OMB when this

19 was transferred over was that changes to the state

20 specific instructions portion of the form would not

21 have to go through the Paperwork Reduction Act

22 process. We would be able to make those at the

1 agency and issue the form without going through that
2 process.

3 Whereas changes to either the general
4 instructions or this applications section would
5 require us to go through the Paperwork Reduction Act
6 process which includes a public comment period which
7 we felt if we started down that path that essentially
8 would -- would bring the greater question of is this
9 full-blown rule making.

10 We have recommended that we move in that
11 direction. We didn't think because this is an
12 interim policy we felt that it should only address
13 state specific instructions and that any changes to
14 this we should address during the full rule-making
15 process which also would take into account Paperwork
16 Reduction Act process.

17 COMMISSIONER HILLMAN: May I ask a
18 question? I appreciate your explanation. I think I
19 heard you say -- please tell me if I heard correctly
20 -- that under the FEC rules, regulations that we are
21 working to move over to EAC, the technical title --
22 What is it?

1 MR. CORTES: In the regulations, it's
2 referred to as the national mail voter registration
3 application form.

4 COMMISSIONER HILLMAN: Okay. So, that
5 title includes the state instruction?

6 MR. CORTES: Yes. I'll read you from the
7 FEC in their definitions section of the regulations
8 form because they refer to form throughout the
9 regulations.

10 Form means the national mail voter
11 registration application form which includes the
12 registration application, accompanying general
13 instructions for completing application, and state
14 specific instructions.

15 COMMISSIONER HILLMAN: Thank you.

16 COMMISSIONER HUNTER: Well, I appreciate

17 your respect to Commissioner Rodriguez' desire to get
18 initial public comments. I think we should strive to
19 do that when we can.

20 I think in this case it's been some time
21 since the EAC received the responsibilities under
22 HAVA to administer the federal form. While I don't

1 know that we necessarily have to have a policy to
2 make amendments to the form, I think it's preferable.

3 So, I move to adopt the policy that I
4 submitted with an accept as a friendly amendment the
5 changes that Chairwoman proposed. If you like, I
6 would read the motion as it stands.

7 CHAIR DAVIDSON: If you would, please.

8 COMMISSIONER HUNTER: The EAC hereby
9 authorizes the director of the Election
10 Administration to amend the state instructions
11 portion of the federal mail voter registration
12 application form where the state official identifies
13 the EAC other changes in the state's mailing address.

14 For all other requests submitted by a
15 state government official to amend the state
16 instructions portion of the federal mail voter

17 registration application form the director of

18 Election Administration shall immediately notify the

19 executive director who shall amend the state

20 instructions portion of the federal mail voter

21 registration form provided, number one, that the

22 request properly reflects the state's law and, two,

1 the request does not require the EAC to alter the
2 voter registration application.

3 The Commissioners shall vote on all
4 appeals brought by a state government official of the
5 executive director's decision.

6 CHAIR DAVIDSON: Second? I will second
7 the motion.

8 COMMISSIONER RODRIGUEZ: Madam Chair, I
9 request a role call.

10 CHAIR DAVIDSON: Okay. Mr. Gilmour.
11 Discussion. You want a discussion period?

12 COMMISSIONER HILLMAN: So I can be clear,
13 your motion does not speak to the procedures that are
14 followed. I heard earlier counsel saying that any
15 procedures would have to be -- would follow the APA
16 even though we are not doing this under the APA.

17 I'm just curious about what your
18 intentions would be under this motion for notifying
19 the public that these changes have been received.

20 COMMISSIONER HUNTER: I think we
21 typically post -- I don't know specifically. We can
22 certainly discuss that later.

1 I think we typically post a lot of the
2 things that the states submit as requested.
3 Obviously any change would be noticed on our web site
4 or however appropriate. Whatever's appropriate.

5 MR. GILMOUR: I'm not sure I fully
6 understand the question frankly. My understanding is
7 we are talking about the proposed motion here?

8 COMMISSIONER HILLMAN: Yes.

9 MR. GILMOUR: We will publish that in the
10 Federal Register according to APA. I believe if -- I
11 am not sure -- Commission Rodriguez I believe she is
12 requesting or making a statement previously she would
13 like to exceed the APA -- I'm not sure if she just
14 wants it posted or --

15 COMMISSIONER HILLMAN: I was not asking
16 -- I was just asking the makers of this motion as to

17 what their intention was under the motion.

18 MR. GILMOUR: The Chair has not stated

19 the question or stated the motion.

20 CHAIR DAVIDSON: She made the motion. I

21 have not reread it. The question before we do the

22 vote. We were at that discussion point.

1 I will read the question. The Elections
2 Assistance Commission, the EAC, hereby authorizes the
3 director of the Election Administration to amend the
4 state instruction portion of the federal mail voter
5 registration application form when a state government
6 official notifies the EAC of a change in the state
7 mailing address.

8 For all other requests submitted by the
9 state government official to amend the state
10 instructions portion of the federal mail voter
11 registration application form the director of
12 Election Administration shall immediately notify the
13 executive director who shall amend the state's
14 instruction portion of the federal mail voter
15 registration form.

16 Provided, one, the request properly

17 reflects the state law and, two, the request does not
18 require the EAC to alter the voter registration
19 application.

20 The Commission shall vote on all appeals
21 brought by a state government official of the
22 executive director's decision.

1 MR. GILMOUR: My apologies, but to make
2 sure we have a clear record before debate began so we
3 all know what we are voting on.

4 I think we should make clear what action
5 we are taking oon the statement.

6 CHAIR DAVIDSON: A motion and a second.
7 And I just read the question.

8 MR. GILMOUR: The action would be to
9 approve this as the EAC policy.

10 THE COURT: That's correct.

11 MR. GILMOUR: I just wanted to make that
12 clear.

13 CHAIR DAVIDSON: Thank you. And a roll
14 call vote has been requested. So, if you would do
15 the roll call vote, please.

16 MR. GILMOUR: Again, I'm going by the

17 rules. Do you want to have a debate on issue?

18 CHAIR DAVIDSON: I thought we had the

19 discussion prior to my reading it. I thought that

20 was the final. I read it the final time. Everybody

21 is prepared to vote.

22 MR. GILMOUR: All right. Chair Davidson?

1 CHAIR DAVIDSON: Yes.

2 MR. GILMOUR: Vice Chair Rodriguez?

3 COMMISSIONER RODRIGUEZ: No.

4 MR. GILMOUR: Commissioner Hillman?

5 COMMISSIONER HILLMAN: No.

6 MR. GILMOUR: Commission Hunter?

7 COMMISSIONER HUNTER: Yes.

8 CHAIR DAVIDSON: The motion fails. It's

9 a tie vote. Any other discussion on any of the other

10 issues that we have before us on this subject before

11 let Mr. Cortes --

12 COMMISSIONER HILLMAN: I do. I want to

13 say I am going to reiterate the appreciation for all

14 the work that the staff did in putting together their

15 very comprehensible recommendation. And I think it

16 would certainly start the Commissioners on the path

17 we must travel probably quickly to properly consider

18 all aspects of it.

19 But I do not believe it would be

20 appropriate for EAC to adopt such a policy without

21 going through the Administrative Procedures Act.

22 On the other hand, I do think there is

1 probably a portion of this that we could salvage
2 today and that we could make useful, and that
3 shouldn't cause any controversy. And I'm prepared to
4 suggest a way that we could handle mailing address
5 changes.

6 Staff has informed us it's going to take
7 at least until January before the process to transfer
8 the rights from the FEC to the EAC is completed.

9 Beyond that, it would take weeks or
10 months for EAC to begin it's rule making. So, I
11 would like to offer that the EAC could adopt a
12 procedure that would allow us to make changes to the
13 mailing address portion of the state instructions
14 section of the form.

15 And my recommendation which I've just
16 distributed in writing would be I move that the

17 Commission hereby authorizes the executive director
18 to amend the state instructions portion of the
19 federal mail voter registration form.

20 And I wanted to get clarification as to
21 whether the word application needs to be inserted in
22 it.

1 When the chief state election official of
2 a state notifies the U.S. Election Assistance
3 Commission of a permanent change in the state's
4 mailing address for receiving voter registration
5 application forms, the executive director may make
6 such amendment only after providing written notice to
7 each Commissioner and receiving no objection after a
8 48-hour period.

9 Pursuant to the Administrative Procedures
10 Act, the U.S. Election Assistance Commission finds
11 that noticing public procedure on this change are
12 unnecessary or contrary to the public interest. All
13 other requests for chief state election official
14 changes to the federal mail voter registration
15 application form shall be considered after the
16 Commission has established its rules and procedures

17 in accordance with the APA.

18 CHAIR DAVIDSON: Commissioner Hunter.

19 COMMISSIONER HUNTER: Thank you, Madam

20 Chair. I think this question is to either you or to

21 our counsel. I thought we just had a discussion from

22 our counsel that it was not in violation of the APA

1 to adopt the proposal that I submitted which would
2 cover the both the mail address as well as other
3 state changes?

4 So, I'm having a hard time understanding
5 why you would change a mailing address and not the
6 state law which is arguably more important and could
7 potentially, you know, lead to a possibility that a
8 person's not registered because they don't have the
9 proper information on the form.

10 So, I am not willing to support it. I
11 appreciate your sentiment in trying to move forward
12 at least in one area. However, I could not come up
13 with a good reason to separate out the address for
14 state eligibility requirements. So, I cannot support
15 it.

16 COMMISSIONER HILLMAN: Well, let me just

17 share with you my thinking. If the form gets to the
18 right place, the election official under NVRA and the
19 state procedures under state law has the
20 responsibility to review the form, if it's
21 incomplete, contact the voter, get complete
22 information, process the form.

1 If the voter never has the correct
2 address to mail it to, the election official will
3 never have received the form and never have the
4 opportunity to process it.

5 I separate EAC doing what it can to make
6 sure the forms arrive at the correct place knowing
7 once that form gets there the election official has
8 the responsibility to make sure that the form is
9 complete and if not complete to contact voter. So,
10 that will engage the process.

11 COMMISSIONER HUNTER: I think you pose an
12 interesting position because it's hard to be against
13 having the right mailing address, but at the same
14 time it's also in my mind hard to have an incorrect
15 state law in there.

16 So, I again think it's more important to

17 have all the information appropriately reflected in

18 the state instructions portion.

19 CHAIR DAVIDSON: Commissioner Rodriguez.

20 COMMISSIONER RODRIGUEZ: Thank you, Madam

21 Chair. I wonder if Commissioner Hillman would agree

22 to postpone a vote on this until the next meeting so

1 we could get public opinion on it.

2 COMMISSIONER HILLMAN: How about if we
3 put the motion on the table and table it until the
4 next meeting, and that at least puts it in play and
5 let people know what they are responding to.

6 So, I would put my recommendation in the
7 form of a motion agreeing that we immediately table.
8 But I would like it to be tabled to a specific date
9 being the next public meeting.

10 CHAIR DAVIDSON: Mr. Gilmour, did you
11 want to say something?

12 MR. GILMOUR: Irrespective of the policy
13 concerns, just a quick look at the document I have a
14 couple of issues with the terminology with respect to
15 the APA. Again, it, of course, applies but it has
16 more than one type of process given a situation.

17 For example, I believe this would be
18 published in the Federal Register. It's not just one
19 kind of process within that. So, it would apply. We
20 would follow it. It just wouldn't apply as it would
21 in the rule-making process which is a different
22 process.

1 So, certainly a slight change in wording
2 with respect to that section would be necessary to
3 insure that it's fully accurate. A little concern
4 with regard to the objection process by the
5 Commissioners suggesting form.

6 HAVA says the Commissioners have
7 authority to act. A process whereby that would
8 trigger a requirement for the tallying votes or deal
9 with the process. I have some slight concerns.

10 COMMISSIONER HILLMAN: You know what I
11 feel like right now? I feel like the little girl in
12 the commercial when I think it's Bank One credit card
13 or something where the tooth fairy comes in and
14 explains to her why she is only getting a nickel for
15 her missing tooth.

16 I'm confused. So at this point if what I

17 hear counsel suggesting is that the wording of my
18 proposal could create confusion or is not accurate
19 and therefore would be misleading, I would be fine to
20 take this tabling is the wording as long as it's
21 consistent to my objective and put it up for comment.
22 But I would ask that this body be

1 prepared to re-visit this issue at the next meeting.

2 I just think that for me and I appreciate what

3 Commissioner Hunter is saying about not wanting to

4 separate. I don't want to separate state

5 instructions from the rest of the form.

6 But I just think that if people use the

7 voter registration for and it gets to a wrong address

8 nobody ever has the opportunity to process the form

9 and tell the voter you need to give us more

10 information, you didn't complete the form.

11 So, since you thoroughly confused me, I

12 am not even going to try to try to clarify it in this

13 setting. I would just proceed. I thank you.

14 CHAIR DAVIDSON: As the chair, I

15 definitely will make sure that this issue is on the

16 next month's agenda which I believe is November 13th

17 is the date we have set for the meeting. So, it will

18 be an item on the agenda. Go right ahead,

19 Commissioner.

20 COMMISSIONER RODRIGUEZ: Thank you, Madam

21 Chair. Just since I don't want to be the only

22 Commissioner without a policy, in terms of proposed

1 policy I suggest any changes to the federal form
2 except for a change of address when submitted by the
3 state's chief election official. That was in parens.

4 Follow the notice comment and hearing
5 requirements of the Administrative Procedures and
6 Sunshine Acts --and Sunshine Act and requires the
7 affirmative votes of at least three Commissioners.

8 I am not making that a motion, but I ask
9 that it be posted for consideration at the next
10 meeting.

11 CHAIR DAVIDSON: Very good. Anything
12 else? Once again, I would really like to thank you
13 and the staff. You spent a lot of time on this. As
14 you were aware, I think that we have learned today
15 that all of us have a different view on it which has
16 not made are job easy.

17 So, thank you very much for your hard

18 work and we will a re-address this issue next month.

19 MR. CORTES: Thank you.

20 CHAIR DAVIDSON: All right. Next we have

21 Brian. Good afternoon to the both of you. Not quite

22 afternoon yet. Almost there.

1 I think first on our agenda we have Mark
2 Skall which is the division chief at NIST. Mark has
3 been the individual I think we all call each by first
4 names anymore we worked together so long on the VVSG,
5 the voluntary voter system guidelines.

6 Mark is here to tell us about the VVSG.
7 Obviously we know we received that, and it was signed
8 by Dr. Jeffries. I lost my cheat sheet. So, I'm
9 going off the top of my head.

10 We will first hear from Mark Skall, and
11 then Brian from our staff is going to talk about time
12 frames and add into those areas.

13 Mark, you have got the floor.

14 MR. SKALL: Thank you. Chair Davidson,
15 Commissioners Hillman, Hunter, and Rodriguez, thank
16 you for the opportunity to testify today on this role

17 in voluntary voting system guidelines.

18 HAVA tasks NIST with providing technical

19 support to the Technical Guidelines Development

20 Committee also known as the TGDC in the following

21 areas.

22 Securing the computers. Methods to

1 detect and prevent fraud, privacy of voting, and
2 accessibility and usability of voting system.

3 Now, as you know, HAVA provided for the
4 creation of the TGDC and mandated that the first set
5 of recommendations of voluntary voting system
6 guidelines be delivered to the EAC nine months after
7 the final creation of the TGDC.

8 Immediately after the completing its work
9 on the VVSG 2005 NIST and the TGDC began working on
10 the next iteration of the VVSG.

11 Culminating approximately two years of
12 concentrated effort the TGDC voted at it's August
13 17th, 2007, meeting to unanimously approve the draft
14 of the next iteration of the VVSG recommendations
15 subject to additional final edits by NIST staff.

16 On September 4th, 2007, the final VVSG

17 recommendations were transmitted to the Election
18 Assistance Commission. Now the new VVSG differs from
19 the VVSG 2005 in significant ways, and I will go
20 through a few of those differences.

21 The new VVSG is a complete re-write with
22 requirements that are clear and un-ambiguous. The

1 new VVSG contains a much more structured approach to
2 include clarity and flexibility.

3 Significant input from usability
4 professionals has resulted in a document that is
5 easier to read while still maintaining much needed
6 precision.

7 The new VVSG includes updated
8 requirements for accessibility and for the first time
9 new requirements for the usability based on
10 performance, metrics and benchmarks.

11 Usability research was conducted on
12 different voting systems using a diverse population
13 of subjects to examine how accurately these test
14 subjects can cast ballots.

15 The aim was to arrive at benchmark values
16 for various aspects of accuracy including how many

17 overall votes are cast correctly and how accurately

18 all ranges of voters cast their ballots.

19 The overall goal is not to constrain

20 vendor design by prescribing a specific user

21 interface that may promote greater accuracy but

22 rather to require the desired accuracy rate via

1 precise performance benchmarks and thus to allow
2 freedom in designing any user interface that meets
3 the required accuracy rate.

4 The new VVSG includes a number of updated
5 requirements dealing with voting equipment integrity
6 and reliability. The Mean Time between failure
7 reliability metric has been replaced with benchmarks
8 used in conjunction with rigorous volume testing to
9 simulate election conditions. And this volume
10 testing is similar to tests now being conducted by
11 the State of California.

12 The new VVSG includes upgraded software
13 coding standards and software development practices
14 to assist vendors in producing code that is easier to
15 examine and test.

16 To promote quality systems, requirements

17 for vendors to comply with ISO 9000, an
18 internationally recognized software quality standard
19 have been added.

20 The commercial off-the-shelf software
21 better known as COTS exemption has been narrowed
22 which will result in more comprehensive testing of

1 COTS products using voting systems.

2 The new VVSG includes many new
3 requirements for improved security in the areas of
4 access control, cryptography, physical security,
5 open-ended vulnerability testing, and security for
6 electronic pollbooks.

7 The new VVSG prohibits radio frequently
8 wireless communications which includes the use of
9 wireless local area networks.

10 In December 2006, the TGDC approved a
11 resolution to include requirements in the new VVSG
12 only for those voting systems that are software
13 independent.

14 A voting system is software independent
15 if a previously undetected change or error in its
16 software cannot cause an undetectable change or error

17 in an election outcome.

18 This essentially means that the system

19 can be audited through the use of independent voter

20 verified records better known as IVVR so that

21 election fraud and errors that would result in

22 changes to election outcomes can be detected.

1 Now the voting systems today that meet
2 the requirements for software independence include
3 paper-based IVVR systems such as optical scan and
4 VVPAT.

5 However, requirements in the VVSG could
6 be met by further forms of IVVR that may not include
7 paper.

8 In addition, the TGDC has recognized that
9 innovations in voting systems that could produce more
10 usable, accessible, and reliable designs need to be
11 encouraged.

12 Some innovations could result in secure
13 voting systems that do not rely on IVVR. To that
14 end, the TGDC has included an innovation class in the
15 new VVSG to assist in the eventual conformance of
16 potential innovative voting system submissions.

17 We are aware that the EAC plans a very
18 extensive public review period to vet these
19 guidelines. The TGDC and staff at NIST look forward
20 to upcoming reviews of these recommendations by the
21 EAC, Standards and Advisory Boards, and the American
22 public.

1 And we will provide technical assistant
2 to the EAC during this period. In just a few weeks,
3 as you know, NIST will be conducting a training
4 session on the VVSG for voting officials.

5 This is also developing open
6 comprehensive test suites so that the requirements in
7 the drafting the VVSG can be tested uniformly and
8 consistently among all testing labs.

9 NIST will be developing these tests
10 throughout the next few years and release them
11 incrementally to the public as they are developed.
12 These tests will help to increase public confidence
13 when voting systems are tested uniformly regardless
14 of which labs are performing testing.

15 In conclusion, NIST is pleased to be
16 working on this matter of national importance with

17 our EAC and TGDC partners. Thank you for the
18 opportunity to testify. I would be happy to answer
19 any questions.

20 CHAIR DAVIDSON: I am going to let you
21 go ahead because I think your presentation is
22 mirroring Mark's might actually help the public and

1 the Commissioners.

2 MR. HANCOCK: Thank you, Madam Chair.

3 Good morning once again. This morning I would like

4 to present to the Commission the staff plan for

5 review, editing, and adoption of the recommendations

6 for the new VVSG we recently received from the TGDC

7 and NIST.

8 Our top priority is getting as much input

9 as possible from as many different sections of our

10 constituents as possible during this period including

11 voters, academics, technology experts, election

12 officials, voting system manufacturers, and test

13 laboratories.

14 The road to final adoption of this

15 document will be both thorough and transparent. Every

16 comment received will be posted on our web site and

17 as was the case with the 2005 VVSG every comment will

18 be considered.

19 It is important I think during this

20 process we need to continue to make our

21 constituencies aware that requirements contained in

22 NIST's next iteration of the VVSG will not impact

1 systems used for the 2008 President election.

2 The road to adoption we see consists of
3 four distinct phases. Phase one the goal is
4 essentially to receive input from the public on the
5 draft that we have received from the TGDC and NIST.
6 We are going to focus on getting the word out about
7 the public's opportunities to comment and how they
8 could be part of this process.

9 We will post the TGDC draft on the EAC
10 web site and describe the public comment process for
11 all of our stakeholders. We will publish the TGDC
12 draft in the Federal Register.

13 We will launch very shortly an
14 interactive public comment feature on the EAC web
15 site, and that will initiate the beginning of a
16 hundred and twenty days first public comment period.

17 Again, all comments will be posted and considered.

18 Throughout this period, we are going to

19 continue to provide our stakeholders to provide input

20 via the EAC newsletter and every other outreach

21 opportunity that we might have.

22 We are going to create a downloadable

1 tool kit for our stakeholders to use to encourage
2 their constituencies to provide input to us. The
3 tool kit will include FAQ documents as well as
4 information about the history of voting systems
5 standards and information about the EAC's voting
6 systems certification program.

7 NIST will help us by making a detailed
8 presentation about TGDC version at the EAC public
9 meeting and will use this opportunity to encourage
10 the public to utilize our online comment tool.

11 Phase two of this process for that phase
12 we have a goal of a consideration of each public
13 comments submitted during the initial comment period
14 to try to reach a consensus on the EAC's draft
15 version of the VVSG.

16 This period Will begin when the first

17 public comment period ends. The EAC is at that time
18 going to update the public about how many comments we
19 receive, and we will begin the process of
20 consideration comments in developing the draft EAC
21 version of the VVSG. Of course, this will entail
22 internal review and consideration of the public

1 comments.

2 At this point, the EAC will also consider
3 returning specific very technical issues that we may
4 get during that initial public comment period to the
5 TGDC and NIST for assistance.

6 And finally the EAC will issue its draft
7 VVSG. All stakeholders, of course, will again be
8 notified and the draft will be posted on our web site
9 and put in the Federal Register.

10 Phrase three of this process will
11 essentially be -- the goal will be to encourage the
12 public again to participate in the comment period.
13 And we will again educate and seek input from the
14 public about the EAC changes and policy decisions
15 that we made on that document.

16 We will again use an online comment tool

17 during this period and again its launch will initiate

18 another one hundred and twenty day public comment

19 period.

20 Again we will update and redistribute the

21 stakeholder tool kit that I spoke of a few moments

22 ago. The updated content will educate the public

1 about the work that has transpired and begin the
2 remaining steps of the process. Once again, seek
3 public input for the draft document.

4 Again as we did for the 2005 document, we
5 will hold a number of public meetings and public
6 hearings on the draft VVSG before the end of that
7 hundred and twenty day public comment period.

8 The final phase is the ultimate adoption
9 of the final version of the VVSG through vote of
10 Commission. Again, all comments before that vote
11 will be considered. Everything that has been
12 submitted by the public.

13 Again, a public meeting will be held, as
14 we did the last time, before the final vote, final
15 staff briefing, and ultimately final adoption of the
16 document by the Commission.

17 With that, Mr. Skall will be happy to

18 take any questions you might have.

19 CHAIR DAVIDSON: I am going to open it up

20 for questioning. We will start as we go around the

21 table. Mr. Skall and Brian are willing to answer any

22 questions. So Commissioners, who would like to go

1 first?

2 COMMISSIONER HUNTER: Thank you very much

3 for your presentation both of you. We appreciate it

4 very much, and we have all talked many times and --

5 in all these meetings and have very good

6 conversation.

7 So, a couple of questions that I would

8 like to ask Mr. Skall we have already talked about

9 before, but one of the questions is that the actual

10 VVSG document, as you stated in your testimony,

11 essentially requires paper.

12 And I say essentially because somebody

13 could in the future come up with another form of

14 device that would be able to create an IVVR that an

15 election official and others could review without

16 software or programmable devices.

17 I have no idea what that might be. I
18 don't know if you have any idea on what that might be
19 in the future, but research in our office we call
20 paper or plastic. So, whatever that might be my view
21 of it is that this actual document requires paper
22 because I don't know what else could satisfy the

1 requirements, and I couldn't contemplate what would.

2 In light of that, you mentioned in your
3 testimony that you have the innovations class as long
4 as it satisfies the software independent requirements
5 it may be able to be certified by the EAC under the
6 VVSG.

7 The question we talked about and I would
8 be interested in your comments today is how can we at
9 the EAC with the help of NIST I hope come up with
10 some more standard because right now there really
11 aren't any guidelines for researchers, or vendors,
12 manufacturers to look at to determine whether or not
13 it makes sense for them from a business perspective
14 to spend the dollars associated with research in
15 order to develop a new machine that might satisfy the
16 software independence requirements and the rest of

17 the requirements in the VVSG but not have paper?

18 So, therefore, it would be difficult for

19 them to spend the necessary dollars and not know

20 whether or not it may get certified.

21 The question is how can we come up with

22 standard for the innovations class if we're -- and if

1 we can do that then why aren't they in actual VVSG?

2 Why are they separated in a separate innovations

3 class section?

4 MR. SKALL: Thank you, Commissioner.

5 Yes. We certainly discussed some aspects of this at

6 previous forums. So, let me begin. The innovations

7 class was put in because TGDC felt there needed to be

8 a way to allow for innovative solutions especially

9 for non-paper solutions to software independence to

10 move forward.

11 Without an innovation class, we would

12 essentially be stuck with solutions that presently

13 exist. TGDC felt that none of the automated

14 solutions were ready for prime time. They all had

15 some flaw whether they be security flaws,

16 accessibility flaws, usability flaws.

17 So, we were faced with the challenge of
18 writing requirements for the innovations class
19 without being totally restrictive to prohibit certain
20 types of solutions. We wanted to be very open on
21 this.

22 So, there are some with requirements in

1 there. The requirements are things like anyone with
2 an innovation class submission must document various
3 things. They must document why the approach is
4 innovative. They must document how they adhere to
5 various requirements including software independence.

6 And they must document where in the
7 hierarchy and move forward. Anything beyond that
8 would be dependent upon the methodology that one
9 would use for the innovation.

10 So, there are a couple of proposed
11 innovations. Something called end to end which is
12 crypto based and witness systems. We could possibly
13 come up with requirements for that, but in doing so
14 the TGDC felt it would be overly restrictive to
15 people who have ideas to proposal different ways of
16 doing things or perhaps offer solutions.

17 So, the TGDC felt and I think I certainly

18 agree with it that there was not much more we could

19 do in a standard without constraining the solution.

20 COMMISSIONER HUNTER: Well put. Thank

21 you.

22 CHAIR DAVIDSON: No questions?

1 COMMISSIONER HILLMAN: Thank you. I have
2 a couple. My first question for Mr. Skall. This is
3 more for me as to offer this explanation for the
4 record. I think I remember and appreciate why it was
5 done.

6 But in the beginning part of your
7 remarks, you talked about how immediately after the
8 two thousand five voluntary voting system guidelines
9 were adopted by EAC the Technical Guidelines
10 Development Committee began work on the next
11 iteration.

12 And some have wondered why when right
13 after the promulgation of one set of guidelines we
14 were immediately working to come up with the next
15 one.

16 Could you just talk a little bit about

17 why it was agreed that was an appropriate way to go?

18 MR. SKALL: Yes. Thank you, Commissioner

19 Hillman. That's an excellent question. Those of us

20 who were involved from the beginning remember that

21 HAVA constrained the first set of recommendations be

22 produced within nine months after the formation of

1 the TGDC.

2 Those of us who have been involved in
3 standards realize how restrictive that time period
4 is. The standards take -- good standard take years
5 to develop. In fact, the previous sets of voting
6 system standards took years to develop.

7 All the TGDC with NIST help could really
8 do within the nine-month period which really turned
9 out to be about seven months because of
10 administrative issues, seven months of actual
11 technical work, was to produce essentially an upgrade
12 to the 2002 VVSG in the areas that the TGDC felt that
13 that particular standard may have been not as
14 rigorous as it could be. So, it wasn't a complete
15 standard. There were many things that needed to be
16 done.

17 So, shortly after doing that it became
18 apparent to many of us including the TGDC that the
19 best outcome would be to have a new standard which
20 was the way that we in the community felt the voting
21 system should be developing a complete set of
22 requirements. So, the VVSG 2005 was essentially a

1 Band Aid.

2 So, there was discussion on how to
3 proceed, and the decision was made to come up with
4 what we felt without any time restrictions is the
5 proper standard for future generation voting systems.

6 COMMISSIONER HILLMAN: The 2005 VVSG
7 became fully effective in not even yet December of
8 2007. So, in a period of something over two years or
9 maybe it was just two years was afforded for
10 manufacturers, and election officials, and others to
11 have an appreciation for what the systems would have
12 to contain to be in compliance.

13 And the two years was sort of a good
14 estimate as to what it might take. And there has
15 been some concern that with this next iteration on
16 the horizon perhaps manufacturers wouldn't even

17 bother to have their systems compliant with 2005

18 because they would just go from 2002 to the next

19 iteration.

20 We don't know what the effective date yet

21 would be for the next iteration if adopted in 2009

22 and the following two-year window. It would be past

1 the 2010 federal elections before they even became in
2 effect.

3 I wondered if you have any observation
4 about that two-year window that was provided with
5 respect to when the guidelines were adopted and when
6 any became fully effective. Did it appear to be
7 sufficient enough time, to much time? Did it add
8 confusion or --

9 MR. SKALL: You know, from a NIST
10 perspective it's really difficult to comment on that.
11 We helped TGDC through our technical expertise
12 produce the best standard for 2005 and the best one
13 for the next iteration. How long it would take for
14 vendors to be able to produce systems is really a
15 market decision.

16 We believe we put in those standards only

17 technology that was doable. How long it would take
18 to be done is just something that we have to speak
19 with vendors to find out.
20 I know you guys at the EAC did a thorough
21 job of researching that. So, I assume it was a
22 reasonable window, but we haven't done any research.

1 MR. HANCOCK: Madam Chair, Commissioner
2 Hillman, if it might add, though, I will share one of
3 the things we have to remember is that there is at
4 least a minimum time we have to try to deal with
5 because we have to remember that the laboratories --
6 whatever standards are adopted the laboratories need
7 to be accredited by NVLAP and obviously through the
8 EAC process before they can test voting systems to
9 those new standards.

10 So, that was certainly one thing we took
11 into consideration the first time and will again take
12 into consideration next time.

13 So, it's not just the manufacturers we
14 have to think about but it's our laboratories as
15 well.

16 COMMISSIONER HILLMAN: My second question

17 is to you, Mr. Hancock. Coming to the end of the
18 cycle for consideration of the next iteration, once
19 we have considered all the comments that are
20 submitted to EAC under the second public comment
21 period, how would we post? What is the process for
22 making public the final document that EAC will be

1 considering for adoption?

2 That is we collect all these comments.

3 We analyze them. We consider what we think are

4 appropriate changes to be made. We do it through the

5 public process.

6 But then we have a final draft, if you

7 will, that obviously could be changed at the meeting

8 if the Commissioners adopted. But at some point we

9 want to make sure the public sees that.

10 So, what would that process be and what

11 would be a fair amount of time? As you can see, we

12 are always kind of like gosh we should have done this

13 in 30 days and we have only two weeks. How can we be

14 transparent and still keep within the time line?

15 MR. HANCOCK: And you're talking about

16 the final version after the Commission --

17 COMMISSIONER HILLMAN: Right.

18 MR. HANCOCK: I didn't state that, but

19 certainly it could be put in the Federal Register for

20 a final period. I would certainly want an opinion

21 from counsel and see how we would want to deal with

22 that.

1 We did not do that the last time, as you
2 remember. But the final changes were noted in the
3 Commission meeting, and the Commissioners took a vote
4 on that document at that time.

5 So, I think it might be something that we
6 want to discuss as to exactly how that has sort of
7 portion of this process continues. There are several
8 options.

9 COMMISSIONER HILLMAN: For myself, I
10 would ask that you put that on your early 2009 to-do
11 list so whatever process if it requires the adoption
12 of something by the EAC that we could do it in a --
13 early enough that we are not jammed about how do we
14 get this done and still meet a reasonable time line.
15 Thank you.

16 MR. HANCOCK: Certainly.

17 CHAIR DAVIDSON: Any other questions? Go

18 right ahead.

19 COMMISSIONER HUNTER: Thank you. Mr.

20 Skall, one thing you said earlier was that some of

21 the systems weren't ready for prime time. And I'm

22 wondering. Another thing you said earlier was

1 depending on the type of security that the system is
2 trying to use there would be different types of
3 analysis or different types of standards.

4 Now putting aside the usability and the
5 non-technical, the non-security aspects of it, is it
6 possible -- Does that make sense?

7 I'm trying to talk about security. So,
8 forget usability and all the rest of it. For now on
9 security if one were to submit an innovative solution
10 using cryptography, are there standards out somewhere
11 that could be used for that sort of thing that
12 wouldn't restrict innovation? A sort of template
13 cryptography standards? Does that make sense?

14 MR. SKALL: Yes, Commissioner. There are
15 certainly standards for cryptography, but those are
16 not -- There are standards for cryptography, for how

17 they do cryptography. We already culled those out in
18 the industry, but the standards I believe you are
19 talking about would be standards or requirements for
20 how to produce sub-systems that meet the VVSG in the
21 end.
22 I don't know. And we can brainstorm on

1 this, and I think we will. But again the finding was
2 during the initial set of brainstorming of the TGDC
3 there is nothing we could quantify to this date.

4 COMMISSIONER HUNTER: Okay.

5 CHAIR DAVIDSON: Commissioner Rodriguez,

6 Do you have any questions?

7 COMMISSIONER RODRIGUEZ: Thank you, Madam

8 Chair. I don't have a question but just a comment.

9 I think, Mr. Hancock, the presentation of
10 the roll-out for the review is an example of our best
11 effort at transparency and inclusion. And I really
12 commend you for the work that this reflects.

13 I know that there are other people on the
14 staff too that came up with this, and I want to put
15 in the record my appreciation to you.

16 MR. HANCOCK: Thank you, Madam

17 Commissioner.

18 CHAIR DAVIDSON: Mr. Wilkey.

19 MR. WILKEY: Well having been through
20 this process going back to 1990, I was just a young
21 boy then.

22 MR. SKALL: You still are, aren't you?

1 MR. WILKEY: Yes. Absolutely. The same
2 age as Mr. Skall.

3 (Laughter)

4 I want two echo what Commissioner
5 Rodriguez said. I think what you have laid out here
6 in terms of roll-out and giving the public and
7 everybody involved in this process a more than
8 reasonable time frame to comment, to come back, to
9 take another look at the document, and begin back up,
10 I don't know of another federal entity that has taken
11 this long, careful, approach to this specific
12 document.

13 So, I want to add to what the
14 Commissioner said. I think it's excellent. I think
15 it's going to get everybody involved in this process
16 plenty of time to make all the comments and to allow

17 the Commission an adequate amount of time to study,
18 and devise, and to really spend a lot of time with
19 this document.

20 Thank you, Madam Chair.

21 CHAIR DAVIDSON: Mine is on the same
22 line. I believe besides the roll-out that you really

1 talked about and going in a little deeper about
2 having continuous -- I don't mean monthly but every
3 so often different meetings with manufacturers, with,
4 you know, roundtable discussions or however it's
5 formed, whether it's a hearing or roundtable.

6 But making those public so the public is
7 able to listen to the manufacturers, the labs, trying
8 to get a time frame of when everything is going to be
9 ready.

10 How long is it going to take the
11 manufacturers. How long is it going to take
12 laboratories to become ready.

13 Always having NIST at the time table at
14 those because there is expertise there that
15 definitely we do thank you for, and we appreciate
16 your being a partner in this process. And we

17 appreciate your willingness to make sure that you see
18 it through the whole process. That's very important,
19 and we do want you to know that.

20 I think that we're on the right track.

21 We've got a lot of work ahead of us here in the
22 future. I don't really have any questions for either

1 one of you, but I do appreciate it.

2 MR. HANCOCK: Thank you, Madam Chair.

3 CHAIR DAVIDSON: Anything else? Thank

4 you very much for both of your presentations. We

5 appreciate it.

6 And coming up, maybe if we could have

7 just take five minutes. Madam Secretary, you're

8 next, so we will bring you up. Do you need a few

9 minutes?

10 Let's take five minutes.

11 (A five-minute break was taken.)

12 CHAIR DAVIDSON: I am going to call the

13 meeting back to order. We're very honored today to

14 have Secretary Brewer with us. She has been the

15 Secretary of State in Arizona since January of 2003.

16 She ran in 2002.

17 I looked at the web site and got a little
18 bit of information. I'm not going to go over all of
19 it because it's very detailed. And definitely you've
20 done a great deal. You have got a lot to be proud
21 of.

22 But one of things that was on the web

1 site on the bio that I thought was very important is
2 she has served the public for 24 years. So, that
3 dedication in serving the public is one that I think
4 we all respect and we do appreciate.

5 So, we welcome you here today, and we are
6 anxious for your comments.

7 SECRETARY BREWER: Thank you, Madam Chair
8 and members of the Commission. I am Janice Brewer,
9 Arizona Secretary of State. I want to thank you
10 today for conducting this hearing and for allowing me
11 to specifically revisit the State of Arizona's voter
12 registration issue dealing with the federal form.

13 With me today is Joseph Kanefield -- I
14 call him Joe -- my state elections director.

15 Let me begin from the outset to be very
16 clear my mission today is not to debate the merits

17 over requiring proof of citizenship when registering
18 to vote in Arizona. Rather, I am here to appeal to
19 Commission to simply abide by the court rulings which
20 we currently live under to date on this issue.

21 By way of reminder, you will recall back
22 in October 5th, 2006, the Ninth District Court of

1 Appeals in San Francisco issued a ruling which
2 temporarily froze Arizona's requirement that
3 potential voters show proof of citizenship when
4 registering to vote.

5 By October 18th, 2006, that decision was
6 vacated by the United States Supreme Court and the
7 proof of citizenship requirements continued forward.

8 The essential point here is that during
9 that two-week period in between the court ruling, the
10 State of Arizona fully abided by that junction.

11 That is to say that the courts told us to
12 temporarily stop rejecting voter registration on the
13 basis of proof of citizenship, and we did. Thus any
14 voter registration forms the county recorders
15 received during that time period that were without
16 proof of citizenship were fully processed and added

17 to the voter rolls.

18 After the October 18 United States

19 Supreme Court ruling, we returned to rejecting those

20 voting registration forms which did not have

21 sufficient proof of citizenship as required by

22 Arizona law.

1 By this past April 20th, the Ninth
2 Circuit Court of Appeals in Gonzales versus the State
3 of Arizona again noted that the legal to preempt
4 Arizona's proof of citizenship requirement was "not
5 likely to succeed."

6 And on August 28, 2007, the United States
7 federal district judge dismissed the entire argument
8 over proof of citizenship holding that the NVRA does
9 not prohibit the State of Arizona from requiring
10 evidence of citizenship at the time of registration.

11 Thus in the face of several court
12 rulings, it would seem to me that the Commission
13 would do just as Arizona did and abide by the court
14 ruling until such time as a legal challenge may
15 overturn the proof of citizenship requirement.

16 As it stands now by not properly

17 informing voters, you are accomplishing nothing. To
18 be sure, anyone who utilizes the federal form and
19 doesn't provide proof of citizenship is still being
20 rejected in Arizona.

21 Thus the actions of the EAC to not
22 include instruction on the form proves not to be a

1 loophole to be getting around the Arizona law.

2 Rather it simply serves as a way to disenfranchise

3 voters from participating in the election process.

4 In the end, Commissioners, I note that

5 the Arizona's Presidential preference election is now

6 scheduled for February 5th, 2008. If history is any

7 indication, there will be an increase in voter

8 registration in Arizona and there will be an increase

9 of people using your federal form as a result of

10 national voter registration efforts.

11 That could mean an increased amount of

12 rejections for those voters who were not properly

13 instructed on the federal form about Arizona's proof

14 of citizenship requirement.

15 In the past year, we know of a hundred

16 and twenty-six registrations using the federal form

17 that were rejected in Arizona's largest county,

18 Maricopa County, alone.

19 A full two-thirds of all the federal

20 forms received in Maricopa County during this time

21 were not processed due to the lack of proof of

22 citizenship.

1 I'm sure you would agree with me that one
2 voter disenfranchised as a result of the government's
3 action is one too many.

4 As to the overall issues of the EAC's
5 involvement in the NVRA which you are considering
6 today I cannot get over the irony of this topic.

7 Back in March of 2006 it was made
8 abundantly clear to me in your letters explaining
9 that Arizona was preempted by the NVRA from requiring
10 proof of citizenship for voters using the federal
11 form.

12 Now after disenfranchising over a hundred
13 voters in Arizona, you decide to hold this hearing
14 questioning the EAC's authority without specific
15 rules over the federal form.

16 It would appear to me the first item of

17 business should be fully rescind the letter sent to
18 me on March 6th, 2006. We have court rulings against
19 you, and the Commission hasn't itself determined the
20 scope of its own authority.

21 So as you consider the scope of your
22 authority to regulate the federal form, I would

1 caution you to refrain from taking the broad view.

2 Congress made very clear when it enacted HAVA that it

3 did not want this body to make rules.

4 And to the extent it transferred the

5 FEC's rule-making authority over the federal form to

6 you, it did so on a limited basis. You would be wise

7 to follow the FEC's and limit the authority you

8 assert over this form to the form itself and not what

9 constitutes a voter registration's qualification.

10 This is a determination that really must be left to

11 the states.

12 In conclusion, I once again urge you to

13 follow the federal court rulings rejecting your

14 position and properly instruct Arizona voters using

15 the federal form about Arizona citizenship

16 requirements.

17 I also ask you to go and to publicly
18 rescind the letter you sent me on March 6, 2006,
19 given that your authority under the NVRA is at best
20 now being questioned.

21 The fact of the matter is I have been
22 asking you to stop disenfranchising Arizona voters

1 for several months now. The lack of action by the
2 Commission leaves me with no choice but to pursue
3 filing a injunctive lawsuit against the EAC in
4 federal district court in Arizona.

5 I will ask the Arizona Attorney General
6 to pursue such legal action specifically to compel
7 the EAC to act in accordance with the law as settled
8 to date by the federal courts.

9 The Election Assistance Commission is not
10 assisting Arizona voters by continuing a policy of
11 withholding critical information from them. Rather,
12 you are maintaining a built-in policy of misleading
13 Arizona voters to improperly registering to vote.
14 Such a policy is beyond comprehension to us, and I
15 ask for it to stop immediately.

16 I thank you again for this opportunity to

17 address the Commission today, and I would be happy

18 answer any questions.

19 CHAIR DAVIDSON: Commissioner Rodriguez?

20 COMMISSIONER RODRIGUEZ: Thank you, Madam

21 Chair and Secretary Brewer.

22 Mr. Gilmour, I wonder if we should engage

1 in any discussion given the imminence of legal action
2 filed against us by the Secretary of State of
3 Arizona.

4 MR. GILMOUR: Well, I do not believe she
5 has filed suit. I see no indication of it.
6 Essentially her participation if she wants to answer
7 your questions is a matter of her own concern and
8 frankly is more of a risk of litigation for herself
9 than us.

10 COMMISSIONER RODRIGUEZ: Is she an
11 attorney or is Mr. Kanefield an attorney?

12 SECRETARY BREWER: Madam Chairman,
13 Commissioner Rodriguez, Mr. Kanefield is my elections
14 director in the State of Arizona, and he is an
15 attorney also.

16 COMMISSIONER RODRIGUEZ: Is he your

17 counsel?

18 SECRETARY BREWER: No, he is not.

19 CHAIR DAVIDSON: Do you have questions?

20 COMMISSIONER HILLMAN: Secretary Brewer,

21 thank you very much. I just had two questions for

22 clarification.

1 When you quoted the number in Maricopa
2 County, I want to be sure if the 126 was the total
3 number of federal forms received or if the 126 was
4 two-thirds rejected.

5 SECRETARY BREWER: Madam Chairman,
6 Commissioner Hillman, the hundred and twenty-six
7 number was the number of federal forms that were
8 rejected. Only in Maricopa County.

9 COMMISSIONER HILLMAN: So, that 126 is
10 the two-thirds that you referred to?

11 SECRETARY BREWER: Madam Chairman,
12 Commissioner Hillman, that's correct.

13 COMMISSIONER HILLMAN: Okay. My other
14 question, if you could tell me, what is the process
15 that Arizona officials use when an incomplete voter
16 registration application is received whether it's a

17 state form, or the federal form, or I don't even know

18 if there are other local county forms.

19 Are any voter registration application if

20 it's not complete what is the process that happens

21 after that?

22 SECRETARY BREWER: Madam Chairman,

1 Commissioner Hillman, if they receive a form either
2 by person or my mail they are notified either by mail
3 or in person that it's improperly filled out or they
4 don't have the right documentation, and the form is
5 rejected until we receive the correct information.

6 COMMISSIONER HILLMAN: Okay. Thank you.

7 COMMISSIONER HUNTER: Madam Secretary,
8 thank you very much for coming today. We appreciate
9 your patience. And I think you've been very patient
10 in light of the fact that I think that the original
11 letter to you was overbroad and extended the reach of
12 the EAC authority to say the least.

13 I fear that unfortunately that may be the
14 only way for us to -- I don't want to speculate, but
15 we will certainly try to come up with some kind of
16 policy that will address the concerns of the states.

17 Obviously we're not able to do so today.

18 I hope we can in the future. I would like to make

19 one point of clarification. I don't believe that

20 Madam Secretary or anybody else is requesting that

21 the EAC change the federal form to require all

22 citizens in all 50 states to submit proof of

1 identification.

2 If that were the case, I think that that
3 would be a completely different analysis. You are
4 only asking -- and correct in me if I'm wrong -- to
5 properly reflect your state's law under the section
6 of the form that says Arizona, and it would include
7 your state's law. Is that correct?

8 **SECRETARY BREWER:** Madam Chairman and
9 Commissioner Hunter, yes. Absolutely correct.

10 **COMMISSIONER HUNTER:** So in that case
11 because the law is good law right now, the court has
12 -- you mentioned in your testimony again it was this
13 two-week period or so that it was enjoined but after
14 the Supreme Court ruled that the Ninth Circuit didn't
15 have any reasoning behind their decision to enjoin
16 that statute, it is good law now.

17 And so as I have said on numerous
18 occasions, I cannot understand why the EAC would not
19 properly reflect state law on the federal form unless
20 and until the law is overturned.

21 So, I appreciate again your making the
22 trip all the way out here, and I apologize for the

1 lack of expediency in this process.

2 CHAIR DAVIDSON: Well, I think that we
3 all really appreciate your coming and doing a
4 presentation for us today. And obviously we hear
5 your concerns, and we thank you for making your trip.

6 SECRETARY BREWER: Thank you, Madam
7 Chairman, Commissioner, for allowing me this
8 opportunity.

9 CHAIR DAVIDSON: Not a problem. Thank
10 you. And, Joe, thank you for being here. Sorry we
11 didn't get down to the details you would have been
12 able to answer.

13 SECRETARY BREWER: Or I might have been
14 able to answer.

15 (Laughter)

16 CHAIR DAVIDSON: That's right. It's time

17 for making remarks. Any Commissioners like to make a
18 statement of the closing record? Commissioner
19 Rodriguez.

20 COMMISSIONER RODRIGUEZ: Thank you, Madam
21 Chair. At my first meeting as a Commissioner I made
22 a statement about staff briefings, and I am just

1 going to quote myself at the risk of sounding like a
2 broken record.

3 I believe that EAC's staff briefing and
4 deliberations can be done on the record. And at the
5 time I said I believe there is interest among
6 Commissioners to discuss this point.

7 And I'm hoping today that we've made
8 steps in that direction. And I think the last two
9 meetings have been very evident of the steps we're
10 taking, but I just wondered if we might consider and
11 this is not a motion or anything but if we could
12 continue down that path.

13 What I am even going to go so far as
14 again not put up for a vote but propose some sort of
15 process where we separate the briefing from the vote
16 so that there is time even if it's not required by

17 administrative law that we can test our -- our

18 actions out before we take them on the public and

19 receive their comment and draft something for your

20 consideration at the future date.

21 Thank you, Madam Chair.

22 CHAIR DAVIDSON: Any other comments?

1 COMMISSIONER HILLMAN: Let me just speak
2 to Commission Rodriguez' suggestion. You all have
3 heard me say before on more than one occasion.

4 For the amount of work that EAC has
5 before it to get done between now and say the next
6 two years I think meeting only once a month if we
7 were to follow Commissioner Rodriguez' suggestion
8 that we reduce the number of tally votes we do and
9 increase the number of decisions made in meetings we
10 have to meet more than once a month.

11 I mean let's use the NVRA as a good
12 example. We wont ought to be able to revisit a
13 temporary policy until November 13th, and then we are
14 then not meeting again until and I don't know if it's
15 been confirmed but December 17th or something like
16 that.

17 COMMISSIONER HUNTER: December 11th.

18 COMMISSIONER HILLMAN: 11th. So, we only

19 have two more meetings for the remainder of the year

20 and we have got a ton of work to do. I don't know

21 how we could possibly accommodate such.

22 It's a good recommendation. If we only

1 meet once a month we will be here until 2010 still

2 trying to get some stuff done.

3 COMMISSIONER RODRIGUEZ: To further

4 comment, we do get briefed by the staff weekly, and I

5 can consider opening those up.

6 CHAIR DAVIDSON: Any other comments? I

7 do want to thank everybody for coming today and being

8 a part of the review. We feel that it's very

9 important we have the audience here and to be a part

10 of our hearings. So, thank you again for being here.

11 Our next one, as we have said, is going

12 to be November 13th. It will be here in D.C. And in

13 this same room. We encourage you to come.

14 We will get a notice out as soon as

15 possible of the things that are going to be taking

16 place on that meeting. So, thank you all.

17 Do I have a motion to adjourn?

18 COMMISSIONER RODRIGUEZ: So moved.

19 CHAIR DAVIDSON: Second?

20 COMMISSIONER HILLMAN: Second.

21 CHAIR DAVIDSON: All right. We are

22 adjourned. Thank you very much.

1 (Whereupon, at approximately 12:52
2 o'clock, a.m., the above meeting was
3 adjourned.)

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1 CERTIFICATE OF COURT REPORTER

2 I, Ronnie C. Palmer, the officer before whom
3 the foregoing proceedings were taken, do hereby
4 certify that the foregoing transcript is a true and
5 correct record of the proceedings; that said
6 proceedings were taken by me stenographically and
7 thereafter reduced to typewriting under my
8 supervision; and that I am neither counsel for,
9 related to, nor employed by any of the parties to
10 this case and have no interest, financial or
11 otherwise, in its outcome.

12

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15 COURT REPORTER

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