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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, FEBRUARY 8, 2007

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

22 Taken by: Jackie Smith, a court reporter

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1 U.S. ELECTION ASSISTANCE COMMISSION:

2 Donetta Davidson, Chairman

3 Paul DeGregorio, Commissioner

4 Gracia Hillman, Commissioner

5 Juliet Thompson-Hodgkins, Legal Counsel

6

7 SPEAKERS:

8 Brian Hancock

9 Steven V. Freeman

10 David Alderman

11 Karen Lynn-Dyson

12 Thomas O'Neill

13 Tim Vercellotti

14 Curtis Crider

15 Roger LaRouche

16 Dan Glotzer

17 Marci Andino

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

2 CHAIR DAVIDSON: I'm going to go
3 ahead and get us started. If I could
4 remind everybody to, first, please have
5 your pagers and your phones either on
6 silent or turn them off, if you would,
7 please.

8 First of all, let's stand and we
9 will give The Pledge of Allegiance.

10 (The Pledge of Allegiance.)

11 CHAIR DAVIDSON: Please call
12 role.

13 MS. HODGKINS: Certainly.
14 Members, please respond by saying here
15 when I call your name. Chair Davidson?

16 CHAIR DAVIDSON: Here.

17 MS. HODGKINS: Commissioner

18 Hillman?

19 COMMISSIONER HILLMAN: Yes.

20 MS. HODGKINS: Paul DeGregorio.

21 COMMISSIONER DEGREGORIO:

22 Present.

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1 MS. HODGKINS: Madam Chair,

2 there are three members present and a

3 quorum.

4 CHAIR DAVIDSON: Thank you.

5 Now, for the adoption of the agenda that's

6 before us, do I hear a motion?

7 COMMISSIONER DEGREGORIO: So

8 moved.

9 COMMISSIONER HILLMAN: Second.

10 CHAIR DAVIDSON: There is a

11 motion to accept the agenda. I take it

12 that's the way you want to word it. All

13 those in favor, say "I." Opposed? Motion

14 passed.

15 In the welcoming remarks, I'd
16 like to say good morning to everybody and
17 thank you for attending on this cold day
18 that we have, the first week that we have
19 had cold weather. This is the first EAC
20 meeting in 2007 and it's my first meeting
21 as Chair, so I'd like to take this
22 opportunity to thank the panelists for

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1 being here, and to thank everybody else
2 for coming and attending. I look forward
3 to the testimony and discussion that will
4 be following. And I also want to thank
5 our court stenographer and also our
6 signers. So we appreciate everybody that
7 puts effort into this, along with our
8 staff.

9 Now, moving into old business,
10 the minutes of our meeting of December 7th
11 is before us. Is there a motion?

12 COMMISSIONER DEGREGORIO: Madam

13 Chair, I have a motion to approve the
14 minutes as presented.

15 COMMISSIONER HILLMAN: Second.

16 CHAIR DAVIDSON: I'll call for
17 discussion. Any discussion? If not, all
18 those in favor say "I." Opposed? Motion
19 carried.

20 I am now going to turn to our
21 general counsel, our EAC General Counsel,
22 Julie Hodgkins, to give the activity

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1 report for the EAC.

2 MS. HODGKINS: Thank you, Madam
3 Chair. There are a few things we wanted
4 to update both the Commissioners and the
5 public on that the EAC has been doing over
6 the last month, since this is the first
7 meeting.

8 First of all, on January 22,
9 2007, the Election Assistance Board of

10 Advisors met here in Washington, D.C..
11 They met in a two-day meeting, and
12 received updates on EAC research and
13 voting system test lab accreditation
14 certification programs. I believe they
15 also heard from members staff on the Hill
16 about upcoming legislation, and got
17 updates from NIST on their work on future
18 iterations of the VVSG.

19 We're also looking forward to
20 our Standards Board Meeting in Atlanta on
21 February 20th to 23rd. If you are
22 interested in getting more information

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1 about these activities, please check our
2 web site, that's, "www.eac.gov."

3 We have had some activity in our
4 voting system certification program over
5 the last month. The first thing is that
6 three voting system manufacturers have
7 registered with EAC to participate in the

8 testing and certification program. Those
9 manufacturers are Debolt Election Systems,
10 Unison Voting Systems, and Dominion
11 Voting.

12 Now, it's important to
13 understand what that means. Registration
14 is merely the first process or first step
15 in the certification process. It means
16 that the companies are eligible to submit
17 systems to EAC for certification. It
18 doesn't actually mean that they have
19 submitted a system for testing.

20 Again, more information on that can be
21 found on our web site. There is a link
22 there for testing and certification, and

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1 that's where you will find that
2 information.

3 As for our voting system test
4 laboratory accreditation program, our full
5 program came on line in January of 2007.

6 As you know, before that program got
7 started, we had an interim program that
8 allowed us to test and accredit several
9 laboratories. Three applied: SysTest
10 Labs, Wiley Labs, and Cyper, Inc.. Both
11 SysTest and Wiley have received a normal
12 accreditation at this point, and Cyper is
13 in the process of having its application
14 reviewed.

15 In addition, as to the full
16 program, in January, we received two
17 laboratory names from the National
18 Institute of Standards & Technology,
19 particularly, their national voluntary
20 laboratory accreditation program. These
21 were recommended to us for accreditation.
22 Those labs are SysTest, and iBeta Quality

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1 Assurance.

2 The Commissioners will be taking
3 this issue up after EAC staff has had an

4 opportunity to review those two labs on
5 non-technical issues, particularly related
6 to conflicts of interest and other such
7 items.

8 So there, again, more
9 information is available on our web site,
10 and we will continue to keep the public
11 posted on activities related to that
12 program through that site.

13 CHAIR DAVIDSON: Thank you.

14 COMMISSIONER HILLMAN: There is
15 more?

16 MS. HODGKINS: A few more
17 things. I know it has been a busy time at
18 EAC. We have been reviewing the state
19 HAVA reports and have discovered that
20 there were a few inconsistencies with some
21 of the states reports. And so we have
22 taken the opportunity to send letters back
10

1 and give the states information about the

2 errors that we found, and also getting
3 them some information on sample forms to
4 fill out so that they have all the
5 information that they need to properly
6 report the funding that they have used at
7 this point.

8 In addition, with regard to HAVA
9 funds, we just wanted to remind everyone
10 that we're in the process of culminating
11 our Section 102 program, that is the
12 funding that was distributed for the
13 purchase of punch card and lever voting
14 systems.

15 At this point, the deadlines for
16 states that have used those funds have all
17 passed, so letters have been sent out to
18 the states requesting certifications.
19 We're in the process of reviewing those
20 certifications, and once those have been
21 reviewed, we will make determinations as
22 to whether or not any of those states have

1 funds that need to be returned. If they
2 do, there is a formula in HAVA that
3 specifically requires that the funds that
4 are returned to us have to be
5 redistributed as requirements payments,
6 just as we distributed requirements
7 payments under Section 251 of HAVA during
8 the 2004 and 2005 fiscal years. So stay
9 tuned for more information on that. As
10 always, information is available on our
11 web site.

12 In addition, many of you may
13 already been receiving our monthly
14 electronic newsletters. And if you have
15 not received that and want to receive it,
16 please feel free to either e-mail us at,
17 "havainfo@eac.gov," or call us toll free,
18 866-747-1471.

19 Thank you, Madam Chair.

20 CHAIR DAVIDSON: You're welcome.

21 The reason why Julie gave the report today

22 is our Director, Tom Wilkey, is out with a
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1 death in the family. So I figured that a
2 lot of you would wonder why he wasn't here
3 today. He doesn't have the flu, it's that
4 he has a death in the family.

5 So do we have any questions for
6 our counsel about the report?

7 COMMISSIONER HILLMAN: I do. I
8 guess we both do.

9 CHAIR DAVIDSON: Commissioner
10 Hillman.

11 COMMISSIONER HILLMAN: A couple
12 questions. Under the HAVA report, the
13 state HAVA report, where it says that
14 we're continuing to work with state
15 election offices to get clarification on
16 past reports, do you have any sense for
17 us, any numbers as to how many of the past
18 reports we're still dealing with, do you
19 know, Julie?

20 MS. HODGKINS: I'm sorry. I
21 don't have that information. I certainly
22 can get that information.

13

1 COMMISSIONER HILLMAN: Okay. It
2 would be helpful to know.

3 Now, are these reports voluntary
4 or states have got to submit these reports
5 to us?

6 MS. HODGKINS: These reports are
7 required. They do cover differences
8 sources of funding, Title I, and that
9 covers a period of time, that fraction of
10 the calendar year. So the state is
11 required to file a report each calendar
12 year with regard to the use of those
13 funds.

14 And there is a second report
15 that deals with the Title II requirements
16 payments, the big pot of money that we
17 distributed, and those are established,

18 specifically established by statute
19 covering the fiscal year. Those reports
20 will be coming at the end of March for the
21 previous fiscal year as well.

22 COMMISSIONER HILLMAN: Okay.

14

1 And some of these deadlines were
2 established in the Help America Vote Act;
3 is that correct?

4 MS. HODGKINS: That's correct.

5 COMMISSIONER HILLMAN: Under the
6 Section 102 certification, if I recall
7 correctly, the letters went out sort of
8 staggered so that response dates are also
9 staggered. Is there one deadline, do you
10 know?

11 MS. HODGKINS: No. They did go
12 out on a staggered basis. For all of
13 these states that took a waiver under
14 Section 102, they said we cannot comply by
15 the original 2004 deadline, their date for

16 compliance then coincided with their first
17 federal election in 2006. Since that was
18 not a single date, what we elected to do
19 was following each primary for a state
20 that had a requirement or took 102 funds,
21 we sent a letter saying the primary has
22 passed, please explain to us how you used

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1 these funds, fill out the certification
2 explaining which systems have been
3 replaced, etc.

4 COMMISSIONER HILLMAN: And so
5 the states that will not take the waiver,
6 they were these --

7 MS. HODGKINS: They were. These
8 were all sent out at one time.

9 CHAIR DAVIDSON: Commissioner
10 DeGregorio.

11 COMMISSIONER DEGREGORIO: I have
12 a question along the same lines of the 102
13 funds in process there. What do you

14 foresee as a realistic timetable for the
15 states to give us the information?

16 I know they are providing each
17 of their certifications to us on whether
18 they spent the money or not, and they have
19 an appeal process in place. But when do
20 you foresee us bringing that process to
21 some conclusion, and the expectation
22 states may have later this year, perhaps,

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1 that some of these funds may be available
2 to them to be redistributed?

3 MS. HODGKINS: It's our goal,
4 Commissioner, to get these funds ready to
5 redistributed by the end of this fiscal
6 year, so that would be September 30th,
7 October 1st this year. We do anticipate
8 there will be some appeals, perhaps there
9 may even have to be some litigation in
10 terms of completing that. We're trying to
11 factor all that in, in terms of giving you

12 a realistic deadline, but that's our goal,
13 to have those funds ready to turn around
14 by the end of this fiscal year.

15 VICE-CHAIR DEGREGORIO: Let's
16 say that all but one state agrees to what
17 the EAC has requested, for them to return
18 the funds, and there is one outstanding
19 state that want to litigate this.

20 Are you saying now that we can't
21 release any of the funds until we have all
22 of the funds in-house?

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1 MS. HODGKINS: I will say to you
2 that I think it would be exceptionally
3 difficult, based upon a formula that we
4 have to use, to redistribute those funds,
5 because it is based upon, first of all,
6 states having the opportunity, if they
7 want to seek a minimum payment, just as
8 they did under the HAVA requirements
9 payments, and then requiring us to

10 distribute those funds based upon their
11 voting age population of their state.

12 It's difficult to apply that
13 formula without knowing the total amount
14 of money you have.

15 CHAIR DAVIDSON: Thank you.
16 Appreciate it.

17 Now, moving on into new
18 business, first, we have an update for the
19 EAC interim laboratory accreditation
20 program. And I want to emphasize the word
21 interim.

22 The EAC full accreditation

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1 program became effective in January of
2 2007. Before the start-up of that full
3 program, the EAC implemented an interim
4 accreditation program. SysTest Labs and
5 Wiley Laboratories received the interim
6 accreditation. Cyper, Incorporated's
7 application is stipulates still under the

8 EAC review. The National Institution of
9 Standards & Technology has recommended
10 that the EAC accredit two laboratories
11 under the full accreditation program,
12 SysTest and iBeta Quality Assurance.

13 I think it's important to
14 explain the differences between the
15 interim accreditation program and the full
16 program. And it is important to explain
17 why it is necessary for the EAC to
18 implement an interim program. So we look
19 forward to hearing from both of you, as
20 well as the process involved in granting
21 the interim accreditation.

22 And, first, I will introduce

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1 Brian Hancock. Brian is the director of
2 our voting systems certification for the
3 EAC, the U.S. Election Assistance
4 Commission, in other words. And
5 Mr. Hancock has over twenty years of

6 experience in the field of election
7 administration and voting systems
8 certification. Mr. Hancock will have the
9 responsibility of managing the EAC voting
10 system certification program from now into
11 the future.

12 The other speaker that we have
13 before you today is Steve Freeman. Steven
14 is a contractor with the EAC who serves as
15 the voting specialist, assessing voting
16 system testing labs for the EAC interim
17 laboratory program. He had the
18 distinction also of a career in the United
19 States Air Force before getting into the
20 arena of voting systems with the
21 certification.

22 So I now turn it over to Brian.

20

1 Thank you.

2 MR. HANCOCK: Thank you, Madam
3 Chair, Commissioners. In order to put

4 some context into the remarks, the very
5 educational remarks that Mr. Freeman will
6 be making in a few moments, I would like
7 to take just a few moments to briefly
8 outline the interim program for you.

9 The EAC launched its interim
10 accreditation program in December of 2005.
11 This action was taken because the National
12 Institute of Standards & Technology, NIST,
13 informed the EAC that the expected time
14 line to complete the HAVA-mandated program
15 of document collection and review, pre
16 assessment, and formal, on-site assessment
17 of the applicant labs under the NVLAP
18 Program, made it highly unlikely that it
19 would be able to provide a list of
20 recommended labs to the EAC before the end
21 of 2006 calendar year. Tis determination
22 made it clear the EAC would need to have

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1 an alternative process in place to provide

2 accredited laboratories, if it wished to
3 implement a certification program before
4 that date.

5 Although Section 231(a)(1) of
6 HAVA provides that lab are generally to be
7 accredited in a two-step process using
8 this, HAVA also provides a mechanism for
9 the EAC to accredit laboratories absent
10 the NIST recommendation, and that is in
11 Section 231(v)(2)(v) of HAVA.

12 This section requires that the
13 EAC publish an explanation when
14 accrediting a laboratory without NIST
15 recommendation, which the EAC's interim
16 program developed international standards
17 used by laboratory accreditation bodies
18 the world over, including NIST's voluntary
19 lab accreditation program.

20 The accreditation process
21 requires laboratories to bring their
22 resources, personnel, and procedures into

1 compliance before accreditation is
2 granted. As noted under the EAC's interim
3 program, two laboratories, SysTest and
4 Wiley, received interim accreditation.
5 One laboratory, Cyper, continues to work
6 with the EAC's laboratory, as set forth,
7 to bring its procedures in line with
8 acceptable standards for the interim
9 program.

10 With that, I think Mr. Freeman
11 can give you some excellent details about
12 what went on with the assessments during
13 the interim program.

14 CHAIR DAVIDSON: We look forward
15 to it. Mr. Freeman, if you can continue.

16 MR. FREEMAN: Thank you, Chair
17 and Commissioners. I appreciate the
18 opportunity to present the information
19 about the EAC interim accreditation
20 program since I have been working on this

21 since July, 2006. The interim program was
22 set up to provide a temporary

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1 re-accreditation for testing against the
2 FEC 2002 voting system standards. It
3 applies to the grand fathered ITA's,
4 pending qualification of the new ST also.
5 The laboratories will be accredited based
6 on international ISO 17025 standard.

7 CHAIR DAVIDSON: Mr. Freeman,
8 could you get a little discloser to the
9 mic or bring the mic closer to you.

10 MR. FREEMAN: Laboratories will
11 be accredited based on international ISO
12 17025 standards for lab accreditation.
13 The formal certification test report
14 produced by the testing laboratories that
15 will be the basis for voting system
16 certification produced as a single report
17 and shows compliance with all
18 requirements, not just the software or

19 hardware components, as previously done.

20 The certification test was to
21 include testing for the HAVA requirements
22 as well as to VSS-2002 requirements. The

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1 ISO/IEC 17025 standards which requires
2 laboratories to maintain technical
3 competence, able to generate technically
4 valid results using this 17025 based
5 accreditation program, accredited labs
6 will have demonstrated basic quality
7 management programs and technical ability
8 to reliably perform, report and recover or
9 reproduce tests to the applicable
10 standards. They should be able to prepare
11 reports from different labs and to help
12 work on consistency in testing between
13 labs. The use of the standard does not
14 guarantee correct, valid, or uniform
15 results, but does support audit and
16 improvement actions needed in reaching

17 these goals.

18 The labs were accredited under a
19 NASED program. Based on earlier versions
20 of the ISO 17025, the labs were in a
21 better position to apply the standard than
22 I expected. One lab already made changes
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1 to comply with ISO 17025 in preparation
2 for accreditation as a VSTL and were
3 actively using it.

4 Another held accreditation under
5 ISO 17025 for many of the test methods
6 required under the accreditation programs,
7 and the third was with an ISO 9001
8 compliant organization which had gone
9 through an audit the year before to bring
10 their procedures in line with the
11 corporate program.

12 The ISO 17025 is not an
13 accreditation standard and has to be
14 implemented in terms of checklist and

15 procedures by an accreditation body. The
16 NVLAP organization created a handbook to
17 cover the 17025, Supplemental Handbook To
18 Recover Voting System Testing
19 Applications. I have been correcting with
20 the handbook, which included some updates
21 of the EAC desired changes and use that
22 draft along with the modified copy of the

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1 NIST handbook, 150 checklist, as a work
2 copy of organization's observations.

3 I also use a technical
4 supplemental checklist check to be
5 performed. A technical checklist was
6 extracted from voting system standards,
7 2002, and includes voting system
8 guidelines of 2005. In the interim
9 program, the emphasis I made was to check
10 that they had basic procedures required,
11 that they can identify and recognize where
12 the particular requirement would be met,

13 and most important, that they had the
14 appropriate records and documents to show
15 the procedure was being followed.

16 Interviews with staff, after
17 reviewing training records, involved
18 including specific categories for specific
19 requests that they show me where the
20 procedures were for specific processes and
21 reports, and that they could access the
22 standards and procedures required for the
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1 actual testing use of voting system
2 standard. I asked them to show me the
3 head voting system. I asked to witness or
4 have demonstrated some particular tests,
5 especially operational status check
6 required in 4615.

7 I'm not going to go into detail
8 at this point on the ISO 17025
9 requirements. There is two specific
10 clauses that apply. One of them is the

11 management specific requirements. The
12 other is classified, which is the
13 technical requirements. I have provided a
14 list of the major items for these clauses
15 from a handbook and some comments about
16 some of the more troublesome aspects. One
17 in particular we should draw attention to
18 is Section 5.4, test calibration methods.
19 The key concept for us is that the test
20 methods pre designed validated a specific
21 requirement or set of requirements. This
22 is used through the standards to identify

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1 and track what is being done by the lab in
2 regard to the results.

3 17025 requirements also defines
4 these reports complete documentation; what
5 method was used, and what results were
6 found. 17025 places requirement to define
7 tests with sufficient detail to allow
8 tests to be repeatable and justify any

9 conclusions. In the technical data
10 package, the checklist that I use, not
11 only identifies particular areas for the
12 test methods, but also identifies
13 procedures and deliverable reports that
14 needed to be provided in support of those
15 requirements.

16 Just to briefly summarize the
17 major areas, in terms of the technical
18 data package, that is review of the
19 vendor's documentation, test plan,
20 describing what testing will be done for
21 that system. A particular item also is
22 the requirement to validate any test

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1 tools, procedures or simulations that the
2 vendor has required.

3 The second major area was the
4 source code review. For that particular
5 one, I brought in sample source code of a
6 module that came from an actual vendor.

7 These involved style issues and very just
8 serious security issues that were
9 difficult to review. The results from
10 that is highlighted by the witness bill,
11 which is a bill for the actual
12 traceability to the actual source code,
13 and cost identified and verified source
14 code review. Physical configuration on it
15 contains tests considered hardware tests
16 that, basically, includes accessibility
17 review, statement specs, and construction.

18 The major product coming out of
19 this showing up in reports would be
20 supplemental lab test reports against
21 those standards and tests. Functional
22 configuration includes how the particular

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1 system met the requirements for a voting
2 system. They include HAVA requirements.
3 An expected outcome for that would be a
4 reference matrix that would show tests

5 were done, what requirements were
6 satisfied, and how the results applied.
7 System integration goes ahead and puts
8 everything -- and includes testing for
9 accuracy, reliability, some security
10 penetration tests required.

11 Finally, the qualification test
12 reports we went through and took a look at
13 the reporting requirements, identified
14 requirements, and some issues, in terms of
15 providing complete, valid reports. One of
16 the things I need to mention in particular
17 that's been a difficulty for this, as we
18 go through on the quest of accreditation,
19 identifying those specific tests and
20 services for which lab receives
21 certifications based on expectation of
22 accredited lab, provide complete record

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1 requirements but the reporting lab does
2 not have to perform those standard tests

3 for which there is a current lab testing a
4 program. However, we need to include the
5 other reports in the final report,
6 responsible to insure reports properly
7 accredit RT to test on models of the
8 voting equipment being used.

9 Even for these test methods,
10 recording labs will need accreditation of
11 test methods to provide instructions on
12 the equipment operation required,
13 modifications, and recording requirements
14 to include standard test methods. Voting
15 system standards must provide range and
16 values for specific test standards.

17 There's also six military
18 standards. These require even further
19 modifications for customizing for voting
20 system requirements, a less clear and
21 standardized test program, such as the
22 OSHA safety standards or some

1 telecommunication security standards which
2 may have standard test methods.

3 That concludes my testimony, and
4 I am open for any questions.

5 CHAIR DAVIDSON: Thank you, very
6 much. I think some of that probably was
7 above all of our heads, but we do
8 appreciate the work that you are doing.

9 Mr. DeGregorio, I will start
10 with you first.

11 COMMISSIONER DEGREGORIO: Yes, I
12 have just some questions. First,
13 Mr. Freeman, I appreciate the work that
14 you have done on this because I know that
15 you are highly respected in this field.
16 And we appreciate the thorough work you
17 have done on this interim program.

18 Mr. Hancock, you described in
19 the beginning, this is an interim program.

20 CHAIR DAVIDSON: We're not
21 hearing well enough.

22 COMMISSIONER DEGREGORIO: The

1 interim program, and that the testing that
2 you did at these laboratories was for this
3 interim program. And when you found that
4 one of the labs you could not recommend
5 because there were some deficiencies in
6 your report that you cited with one of the
7 labs, you recommended that we did not move
8 forward until these deficiencies were
9 taken care of; is that correct?

10 MR. HANCOCK: Yes, sir.

11 COMMISSIONER DEGREGORIO: And
12 this program is certainly different than
13 the full NVLAP program accreditation that
14 we're going to talk about next. I think
15 that's an important distinction, and that
16 this program was not the NASED program,
17 this was the EAC program.

18 And as I understand these
19 standards that you looked at, Mr. Freeman,
20 the basic standard was the ISO 17025?

21 MR. FREEMAN: That's correct.

22 COMMISSIONER DEGREGORIO: You

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1 have described now some other standards
2 that could be looked at, that might be
3 looked at. When NVLAP looks at this, do
4 they go further than the ISO 17025 by
5 other standards to their certification
6 program which you are going to be involved
7 with?

8 MR. FREEMAN: They don't,
9 currently. There is an issue of 17025
10 that is specifically a program to test to
11 determine characteristics of performance.
12 It's more like a materials type of testing
13 than the type of testing that is required
14 for voting systems.

15 There's two other international
16 standards to apply. Every time I tackle
17 this, I am surprised that people don't
18 realize the broad scope of what has to be

19 done by the labs. One city is on 1720,
20 which deals with the inspections and
21 reviews. It's not part of the test
22 procedure and we see I think in the data

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1 review and some characteristics of the
2 equipment, particularly some of the
3 accessibility standards.

4 The other one is the ISO 65,
5 which is a program to certify against
6 certification programs and its products.
7 In this particular case, that includes the
8 issues in terms of trying to review and
9 evaluate on full compliance, in terms of
10 the national test report itself. The
11 other standards that you may be referring
12 to in the voting system standards, there
13 are specific test methods.

14 As part of VSTL, the
15 laboratories do not have to accredit
16 against all those standards. They can use

17 results by an accredited lab, in terms of
18 accredited diagnosis, other programs,
19 however, to include the reports and they
20 have to make sure that those reports are
21 accurate, right for voting system under
22 accreditation. That's a pretty big

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1 caveat.

2 Does that answer your question?

3 COMMISSIONER DEGREGORIO: Yes.

4 CHAIR DAVIDSON: Commissioner
5 Hillman.

6 COMMISSIONER HILLMAN: Yes. I
7 have a couple of questions. And part of
8 what I want to try to do here is establish
9 clarity around some transitional
10 activities that happened before the
11 Election Assistance Commission began its
12 work to accredit laboratories. And I do
13 that because I think the public has been
14 very badly served by misinformation that

15 has gone out, mainly through media and
16 blogs. And because a lot of this is so
17 technical, to just over simplify things
18 would leave the public, I think, wondering
19 about the security and the test quality,
20 if you will, about the systems. And I
21 think that is a disservice. And even
22 though the Election Assistance Commission

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1 has discussed this at previous meetings,
2 there seems to be some important
3 information that gets lost in the
4 translation.

5 So, Brian, I just want to sort
6 of clarify a couple of things. Before the
7 Election Assistance Commission was
8 established and before we had the
9 resources to begin developing and being
10 ready to implement any lab accreditation,
11 I understand that that work was done by
12 the National Association of State Election

13 Directors, NASED.

14 MR. HANCOCK: Yes.

15 COMMISSIONER HILLMAN: Did they
16 call it accreditation or what was the term
17 that NASED used when it determined a
18 laboratory was prepared to conduct the
19 testing against standards?

20 MR. HANCOCK: I'll begin, and I
21 am sure Steve will jump in.

22 NASED actually had developed

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1 sometime ago it's own lab accreditation
2 manual to use when they went out and
3 looked at a lab. So they did have
4 procedures, and as far as I am aware, do
5 follow existing ISO standards that were in
6 place at that time.

7 COMMISSIONER HILLMAN: So would
8 it be accurate to say that they
9 accredited?

10 MR. FREEMAN: Yes, it is.

11 It was an accredited program, and an
12 accredited body, 902-8. It was based on
13 the predecessor for the 17025, which was
14 ISO 65. I think I got that right. And
15 also it included reviews and included
16 material that was being developed, initial
17 draft to the 17025 standard.

18 COMMISSIONER HILLMAN: Thank
19 you. And is it accurate that you can
20 interchange laboratory and ITA, it means
21 the same entity?

22 MR. FREEMAN: Yes.

39

1 MR. HANCOCK: Correct.

2 COMMISSIONER HILLMAN: Now, the
3 Election Assistance Commission did not
4 take over the NASED accreditation program,
5 did it? We developed our own program. Or
6 did EAC take over the NASED accreditation
7 program in part or in whole?

8 MR. HANCOCK: No. There was a

9 very clear delineation. I think we tried
10 to make that clear under our certification
11 program, but also under the interim
12 accreditation program, we did from the
13 labs that were accredited. They were the
14 ones that had the experience and they were
15 doing the work.

16 As I noted, we did need to move
17 the interim process along, and that was
18 the most likely to get very quick work
19 done in this area.

20 COMMISSIONER HILLMAN: Isn't it
21 true that we not only accepted but we
22 invited those labs to apply to our

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1 program?

2 MR. HANCOCK: Yes.

3 COMMISSIONER HILLMAN: So then
4 we move into the implementation of our
5 interim program, and we were working
6 around some pretty specific time frames in

7 order to have an interim accreditation
8 program in place that could take care of
9 certain things in the months leading up to
10 the election because we knew that NASED's
11 program was going to end in the summer of
12 2006.

13 If I don't have the time frames
14 correctly, please correct that for me.

15 MR. HANCOCK: No, that's
16 correct. NASED made a formal notification
17 that they were eventually closing their
18 program down in, I believe, July of 2006.
19 That again worked into the fact that we
20 knew the NIST labs would not be ready
21 until significantly later than that. We
22 also knew that pre election time, there

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1 are often a number of voting systems that
2 do need to come in for some testing and
3 certification. That was another thing
4 that spurred the interim program.

5 COMMISSIONER HILLMAN: And even
6 though NASED's labs tested against voting
7 system standards and the labs that we
8 accredited in our interim program also
9 tested against those same standards, is
10 that correct, the 2002 voting system?

11 MR. FREEMAN: There is a
12 distinction between the two. The interim
13 program requirements for testing were
14 against the HAVA requirements.

15 COMMISSIONER HILLMAN: So the voting
16 system standards of 2002 plus --

17 MR. FREEMAN: Plus?

18 COMMISSIONER HILLMAN: Plus HAVA
19 requirements.

20 COMMISSIONER HILLMAN: And when
21 you began doing work for us Mr. Freeman,
22 you were aware that the Election

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1 Assistance Commission was challenged by
2 resources and time to put its program

3 together, that is, we were moving as
4 quickly as possible.

5 MR. FREEMAN: Yes, I was. Yes.

6 COMMISSIONER HILLMAN: And in
7 your assessment of the quality and timing
8 of the program that the EAC put together,
9 I mean was it something that would stand
10 muster in the industry?

11 MR. FREEMAN: That's a very fair
12 question, given the review that I did of
13 the programs. If I had done this for a
14 full accreditation body over a period of
15 two to three days, I would have to go out
16 by myself and review this and cover the
17 requirements and technical reviews. There
18 just wasn't time resource, and
19 particularly trying to meet the initial
20 deadline, which I believe was the 17th of
21 July.

22 So the results, the only thing I
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1 could do is basically skim through the
2 requirements, pick those particular items
3 and try to look and see what was going on,
4 make sure that we were following the
5 program, that they were following their
6 own procedures, and the procedures covered
7 some basic concepts and ideas under 17025.
8 One of the points of my testimony was the
9 fact that I found labs to some extent, a
10 couple, that were further along in that
11 process.

12 COMMISSIONER HILLMAN: Could you
13 speak up a little bit?

14 MR. FREEMAN: Basically, what I
15 was saying, I found labs were in better
16 shape on that than I really kind of
17 halfway expected because of work they were
18 doing trying to expect for the standards
19 and prior practice and programs, but it
20 was still a lot of material to cover.

21 There is no way that I could

22 cover every requirement. I tried to

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1 identify if they had procedures,
2 materials, and they were using them. In
3 terms of the actual 2002, I went through a
4 summary pass through all the procedures to
5 see that they had test methods and
6 procedures to deal with all the
7 requirements.

8 I did not have the time to do a
9 detailed analysis of every single one of
10 them.

11 COMMISSIONER HILLMAN: Brian,
12 what, if anything, was missed because our
13 interim accreditation program did not
14 accredit labs to test against the 2005 --
15 the voluntary voting system guidelines of
16 2005 that EAC adopted.

17 MR. HANCOCK: Well, I think one
18 of the most significant changes from 2002
19 to 2005 is the increase in the number of

20 requirements for accessibility of voting
21 systems. That certainly would not have
22 been covered in Steve's actions.

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1 There were also some other items
2 related to security and wireless that may
3 not have been looked at as carefully but
4 we certainly understand that NVLAP has
5 looked at those things in the labs that
6 they recommended.

7 COMMISSIONER HILLMAN: And the
8 work that the labs that received the
9 interim accreditation would have
10 performed, the items covered in the 2005
11 against the 2002 plus HAVA requirements,
12 we -- the Election Assistance Commission
13 deemed that it was sufficient that work
14 the labs would be doing under the interim
15 program, that it would be accredited
16 against 2002 plus HAVA requirements was
17 sufficient while we were waiting for our

18 full accreditation program to be
19 operational.

20 MR. HANCOCK: Yes, ma'am. We
21 were very specific in that the scope of
22 the accreditation was limited to testing

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1 to the 2002 standards and did not cover
2 the 2005.

3 COMMISSIONER HILLMAN: And has
4 any state complained that as a result of
5 the limited testing that could be done
6 under our interim program, they had a
7 system that would have to be on hold until
8 our full program was up and running, do we
9 know?

10 MR. HANCOCK: I did not receive
11 any complaints of that nature.

12 COMMISSIONER HILLMAN: Okay.
13 And I think we did a good job or at least
14 a reasonable job of informing states as to
15 where we were and why we had an interim

16 program. And I harp on in because there
17 seems to be a lack of appreciation for the
18 transitional activities that had to take
19 place to get from July, 2006, when NASED
20 ended its qualification system,
21 qualification program, and when EAC would
22 be ready to accredit laboratories under

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1 it's full accreditation program, which
2 will be sometime in 2007. So we could
3 have had a gap of nine months to a year,
4 depending on the time frame.

5 MR. HANCOCK: Yes. I think
6 that's a fair summary. First of all, in
7 July of 2007, when we -- the first time we
8 actually discussed the implementation of
9 this program was in Santa Fe, which the
10 EAC meeting was in conjunction with the
11 summer NASED meeting that was being held
12 there.

13 In addition to that, when the

14 two interim labs that were accredited
15 received their accreditation, the EAC sent
16 notification to over 900 state and local
17 officials, and the information was posted
18 on the EAC web site. In fact, at the
19 October, 2006 EAC meeting, we had
20 representatives from the two interim
21 accredited labs testify before you.

22 COMMISSIONER HILLMAN: Okay.

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1 And I guess the only thing I'll close
2 with, and I want to thank both of you
3 gentlemen for having this conversation
4 with me, but it helps clarify some things
5 for me but, hopefully, also on the record
6 for others to consume, I will just say
7 that when people choose to follow this for
8 the Election Assistance Commission, they
9 can do it in a way that provides great
10 resource and great value and great
11 information to the public, but I also

12 think that the entities that do choose to
13 follow this have the responsibility to
14 understand what they are reporting on.

15 And as we observe from Mr.
16 Freeman's testimony, it's not a
17 simplified -- I mean, I haven't seen the
18 book that says lab accreditation for
19 dummies. I haven't that book yet. It
20 can't be broken down to its simplest terms
21 and still do justice to the integrity of
22 the program.

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1 MR. FREEMAN: Could I add one
2 more thing, in terms of the question you
3 asked, Brian, there is another aspect of
4 that interim program that needs to be
5 understood. Many of the systems out there
6 use successfully may never meet the 2005
7 requirements.

8 COMMISSIONER HILLMAN: Can you
9 speak up?

10 MR. FREEMAN: Requirements.

11 There are systems being used successfully
12 by procedures that the local election
13 officials use. These specific programs
14 are still being subjected to changes
15 because of changes in the legal
16 requirements for elections and some other
17 processes.

18 The vendors have the option of
19 requesting to be certified under the VSS
20 2002 or 2005 requirements. The interim
21 program was able to deal with those
22 particular requirements against those

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1 systems, and provide support for testing
2 against that criteria. In many cases,
3 many of the vendors were not prepared to
4 go forward with the 2005.

5 This needs to be considered when
6 we're talking about this because we will
7 still see systems used that are going to

8 be compliant with 2002, but may not be
9 voluntarily subjected to the 2005
10 certification.

11 CHAIR DAVIDSON: I think there
12 is one aspect that I would like to bring
13 up in the interim program, that we
14 actually set the interim process up.
15 Brian, there was a limit of what we could
16 test on the system. In other words, we
17 didn't allow any new systems to come in
18 for testing. It wasn't hardware testing.

19 Can you exactly tell the
20 audience and give us the information on
21 exactly what we were allowing in the
22 interim process to be tested to the 2002

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1 requirements?

2 MR. HANCOCK: Yes, Madam Chair.
3 Under our pre election certification
4 program, the only thing that we were
5 testing at that point would have been

6 modifications to pre existing systems that
7 already had been qualified to those 2002
8 voting system standards. That was a very,
9 very limited interim certification, if you
10 will, under that program.

11 CHAIR DAVIDSON: I appreciate
12 that. I think it is real important to
13 know that we weren't trying to certify new
14 equipment in that process before the
15 election. And we only took on that avenue
16 because we knew that state laws could be
17 changed or court cases could change
18 something, and they needed to bring their
19 software back in and have it checked and
20 have it go through the process.

21 Another question that I have for
22 you, the Cyper application is still

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1 pending. And I think that there has been
2 some real concern about why we didn't
3 identify and notify the public. And would

4 you give us, both of you, kind of some
5 information in the process. And I will
6 let you put it into your words, exactly
7 how they proceed.

8 A lab continues to be reviewed
9 until they meet all of the qualifications.
10 So Brian, can you go into that deeper, and
11 then Steve, if you want to add something,
12 certainly feel welcome to.

13 MR. HANCOCK: Yes. Thank you,
14 Madam Chair. That is correct, we tried to
15 model our interim program as much as
16 possible to the existing program that
17 NVLAP uses. Generally, as far as I am
18 aware, NVLAP will come into their program,
19 they will receive their pre assessment
20 visits, on-site assessments, and receive a
21 report.

22 If that report shows

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1 non-conformities, they will be given a

2 period of time in which they can correct
3 those non-conformities, and that may go on
4 for sometime, depending on the level of
5 the non-conformities, the details and
6 other things.

7 So that's what we try to do in
8 our program as well. It was not a program
9 where we would immediately drop a lab or
10 kick a lab out without giving them the
11 opportunity to take care of the issues.

12 Steve, do you have anything to
13 add?

14 MR. FREEMAN: I'm not sure I
15 have anything in particular at this point,
16 but basically, what was going on, we did
17 try to follow the process very carefully.
18 And with the exception of not having a
19 chance to do a pre assessment of the labs,
20 this is the advantage that SysTest had.
21 They had pre assessment. Wiley and Cyper
22 had not had the pre assessment, so in

1 particular for Cyper, this came as a
2 rather large shock. The scope of the
3 testing, scope of the responsibility, was
4 far greater than they were aware of at the
5 time. And this is where a lot of the work
6 is still being worked on to provide full
7 on coverage against the 2002 requirements.

8 CHAIR DAVIDSON: And when we get
9 into the next panel, I think we will come
10 to understanding how long the tests --
11 when they started, and the pre assessment
12 to the full letter that came to us.

13 MR. FREEMAN: It is not a short
14 process.

15 CHAIR DAVIDSON: It is a lengthy
16 process.

17 CHAIR DAVIDSON: Okay. Thank
18 you, very much, panel.

19 What we're going to do is take a
20 five-minute break to give our stenographer
21 a little bit of rest in her hands, and we

22 will try to get right back. So, please,

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1 if you will take your break very quickly.

2 (Short Recess.)

3 CHAIR DAVIDSON: Okay. We're

4 going to get started again. Thank you.

5 You followed instructions quite well. I

6 appreciate that.

7 We're going to start in again,

8 and the process of accrediting labs is

9 plainly described in the Help America Vote

10 Act. As I said, NIST has a recommendation

11 that the EAC accredit two voting system

12 test laboratories. This is the first step

13 in the process.

14 The next step is for the EAC to

15 conduct a non-technical review of these

16 labs, and the Commission will then make a

17 final decision regarding accreditation.

18 And now we will hear about the

19 NIST process, and I want to introduce

20 David Alderman. David comes to us,
21 leader, standards coordinator and
22 conformity group as NIST. This group at

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1 NIST is in its formation of the technical
2 standards and assessment activity. Prior
3 to that, David was the National Voluntary
4 Laboratory Accreditation Program for 14
5 years. He was with them for 14 years, and
6 in that area, during that time, he was a
7 project manager for NVLAP's largest
8 project, which we have all heard so much
9 about, where he was responsible for
10 accrediting over 600 asbestos testing
11 laboratories.

12 And I'm going to go ahead and
13 turn it over to you, Mr. Alderman. Then
14 following you will be Brian Hancock. As
15 you can see, we welcome Brian back to the
16 table. He is our director of the voting
17 system certification program and the

18 Commission relies heavily on Brian with
19 his knowledge and experience. We thank
20 him for his continued hard work and his
21 loyalty and dedication to the EAC.

22 Mr. Alderman, I will let you

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1 start.

2 MR. ALDERMAN: Thank you, Madam
3 Chair, Commission. The Help America Vote
4 Act requires National Institute of
5 Standards & Technology to conduct an
6 evaluation, independent non-Federal
7 laboratories, and submit to the EAC a list
8 of those laboratories that NIST proposes
9 to be accredited to carry out the testing,
10 certification, decertification, provided
11 for under the act.

12 The EAC acts on NIST
13 recommendations, applying the criteria for
14 approval to carry out mandated activities.
15 NIST is carrying out this responsibility

16 through its National Voluntary Laboratory
17 Accreditation Program, more commonly
18 referred to as NVLAP. The NVLAP
19 evaluation process is independent and
20 separate from the conformity assessment
21 activities of the EAC. In short, NVLAP
22 accreditation provides the basis for NIST

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1 recommendations to the EAC. It is a
2 necessary but not sufficient condition for
3 EAC approval of voting system testing
4 laboratories.

5 NIST recently informed the EAC
6 that it had completed a comprehensive
7 technical evaluation of the competence of
8 two voting systems to federal standards,
9 and proposed that iBeta Quality Insurance
10 and SysTest Labs be accredited by the EAC
11 under provisions of HAVA. The letter to
12 the EAC and its attachments can be viewed
13 at vote.nist.gov web site.

14 Currently, NVLAP is proceeding
15 with the evaluation of four other labs
16 that have applied and anticipates
17 conducting an on-site assessment of a
18 third laboratory within the next month or
19 so. Those four labs are: InfoGuard
20 Laboratories, Inc., BKP Security Labs,
21 Wylie Laboratories, and Cyper Labs.

22 NVLAP is a voluntary,

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1 fee-supported program to accredit
2 laboratories found to be competent to
3 perform specific tests for calibrations.
4 The program was established in NIST in
5 1976 to serve the needs of the Government
6 and private sector by fostering and
7 promoting a uniformly acceptable base of
8 professional and technical competence in
9 the laboratory community, and to
10 facilitate the acceptance of calibration
11 and test results between countries to

12 avoid barriers to trade. The program
13 provides an unbiased, third-party
14 evaluation and recognition of competence,
15 as well as expert technical guidance to
16 upgrade laboratory performance. NVLAP
17 procedures are codified in the Code of
18 Federal Regulations (CFR, Title 15, Part
19 285).

20 Simply stated, NVLAP offers
21 formal recognition that a laboratory is
22 competent to carry out specific tests for
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1 calibrations. Expert technical assessors
2 conduct a thorough evaluation of all
3 aspects of laboratory operations that
4 affect the production of test data using
5 recognized criteria. General criteria are
6 based on international standards that we
7 have heard about before this morning, ISO
8 17025 entitled, "General requirements for
9 the competence and testing and calibration

10 laboratories.

11 Laboratory accreditation bodies
12 use this standard specifically to assess
13 factors relevant to a laboratory's ability
14 to produce precise, accurate data,
15 including the technical competence of
16 staff, validity and appropriateness of
17 test methods, testing and quality
18 assurance of test and calibration data.
19 NVLAP includes this standard in NIST
20 Handbook 150, NVLAP Procedures and General
21 Requirements.

22 Laboratory accreditation

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1 programs usually also include technical
2 criteria for specific fields that
3 laboratories must meet, in addition to
4 demonstrating general technical
5 competence. For the NVLAP voting system
6 testing program, the technical criteria
7 contained in the NIST Handbook 150-22.

8 Laboratories wishing to be
9 recommended by NIST to the EAC for
10 accreditation to test voting system
11 hardware and software are required to meet
12 the NVLAP criteria for accreditation as
13 well as the 2002 VSS and the 2005 VVSG.
14 Labs are required to complete the NVLAP
15 application process and pay the applicable
16 fees. Rigorous onsite assessments must be
17 conducted and labs undergoing assessments
18 must resolve any identified
19 non-conformities before NIST will
20 recommend a lab to the EAC.

21 Additionally, a lab must be able
22 to perform a core set of voting system

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1 tests. Testing is specified in the VSS
2 2002 and VVSG 2005. Of these tests, the
3 core test methods include: Technical data
4 package review, physical configuration,
5 source code review, functional

6 configuration, system integration test,
7 reliability and accuracy tests, and
8 security tests.

9 The non-core tests may be
10 subcontracted out to other labs accredited
11 for testing in: Electromagnetic
12 compatibility, telecommunications,
13 environmental, electrical, acoustical, and
14 cryptographic modules.

15 To ensure continued compliance,
16 voting system testing laboratories undergo
17 an onsite assessment before initial
18 accreditation during the first renewal
19 year and every two years thereafter to
20 evaluate their ongoing compliance with
21 specific accreditation criteria.

22 To give you a little

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1 background on the time line, on June 23,
2 2004, NIST published a Federal Register
3 Notice announcing that any labs wishing to

4 conduct testing under HAVA should contact
5 NVLAP for further information. NVLAP
6 conducted a public workshop on August 17,
7 2004, with interested laboratories, to
8 review its accreditation criteria, as well
9 as receive comments and feedback.

10 After the workshop, NVLAP began
11 finalizing technical criteria to start
12 making necessary logistical arrangements
13 to begin the actual assessment of the
14 laboratories. NVLAP then identified,
15 contracted, and trained technical expert
16 assessors to perform the on-site
17 assessments.

18 In June, 2005, Federal Register
19 notice invited interested parties to
20 submit an application to NIST by August
21 16, 2005. The first group of applicant
22 labs was given the opportunity to undergo

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1 the first round of pre-assessments.

2 Pre-assessment benefits both the lab and
3 the accrediting body. Although not a
4 requirement, it is used to prepare the lab
5 for the full, on-site assessment and is
6 particularly useful in a new accreditation
7 program. It gives the lab the chance to
8 see how close they are to performing to be
9 accreditation requirements and also gives
10 the accreditation body the opportunity to
11 fine tune the process and improve the
12 technical checklist.

13 Three labs applied in time to
14 qualify for the first series of three
15 pre-assessments. The last of these three
16 pre-assessments was conducted this past
17 June. As a result, one of these labs
18 decided not to continue with the
19 accreditation process. The other two
20 decided to pursue accreditation for voting
21 system testing.

22 NVLAP received applications from

1 four additional labs after the August 16,
2 2006 deadline. NIST recognizes that
3 transparency is key to building public
4 trust and confidence in voting systems.
5 To that end, we have posted a document
6 that explains the process and addresses
7 related questions. This document is
8 posted on the vote.nist.gov web site. In
9 addition, for each lab NIST has
10 recommended, we have posted the assessment
11 report and the laboratory's detailed
12 response to that report. These reports
13 contain substantial detail as to NIST
14 recommendations.

15 As stated earlier, NIST's role
16 under HAVA is to recommend technically
17 competent, independent, non-Federal
18 laboratories to the EAC for their
19 consideration. The EAC makes the final
20 decision to accredit laboratories based on

21 the information provided by NIST and the
22 Commission's review of the non-technical

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1 issues, such as conflict of interest
2 policy, organizational structure, record
3 keeping protocols, and more, that Brian
4 will testify on later.

5 Thank you for the opportunity to
6 provide this testimony about the NVLAP
7 program and its role with the EAC in
8 accrediting laboratories.

9 CHAIR DAVIDSON: After Brian
10 testifies, then we will come back for
11 questions. Thank you, very much for your
12 testimony.

13 MR. HANCOCK: Thank you again,
14 Madam Chair, Commissioners.

15 As noted by Mr. Alderman, on
16 January 18, 2007, the EAC received a list
17 of recommended labs put forward for
18 accreditation under the requirements of

19 the Help America Vote Act. These labs
20 were iBeta Quality Assurance, Colorado,
21 and SysTest Labs, located in Denver,
22 Colorado.

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1 While NIST, through it's
2 voluntary accreditation program, has
3 thoroughly reviewed these two labs'
4 technical capabilities, procedures, and
5 personnel, EAC must also carry out its own
6 due diligence prior to the Commission
7 voting to accredit these labs.

8 On January 31, 2007, EAC sent
9 both labs a letter requesting specific
10 information, asking them to agree to
11 specific program requirements, and to
12 certify to certain conditions and
13 practices of their laboratories.
14 EAC has asked the labs to provide simple
15 information about the lab, including
16 physical address and contact information

17 for lab personnel, identity of the lab's
18 insurers, and the coverage limits,
19 laboratory organization chart, a copy of
20 the lab's conflict of interest policy,
21 copy of the laboratories facilities
22 brochure, as well as the lab's most recent
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1 annual report and corporate information.
2 Non-incorporated labs will be asked to
3 provide similar information about their
4 organization.

5 The EAC has also requested that
6 the lab submit a signed letter of
7 agreement stating their acceptance of
8 certain policies as a pre condition of EAC
9 accreditation. These policies include a
10 requirement that the lab maintain their
11 NVLAP accreditation, a requirement to
12 authorize EAC staff and represents to
13 enter the lab facilities to observe voting
14 system testing, review documentation, and

15 examine lab conditions and practices,
16 a requirement that the lab adhere to all
17 current and future EAC requirements
18 regarding the EAC lab accreditation
19 program and the EAC voting system testing
20 and certification program, and a
21 requirement that the lab provide EAC
22 notice of any claims filed against it or

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1 to subcontractors' work related to the
2 management voting testing system.

3 Finally, a lab may not receive
4 EAC certification unless it positively
5 affirms certain conditions and practices,
6 including a certification that the lab
7 does not and will not employ individuals
8 who have been convicted of any criminal
9 offenses involving fraud, certify that the
10 laboratory maintains and enforces policies
11 that prohibits and prevent conflicts of
12 interest or perceived conflicts of

13 interest. Specifically prohibited
14 activities include the holding by a lab
15 employee, their spouse or dependent
16 children of any financial stake in voting
17 system manufacture, being involved with
18 the development and testing of the voting
19 system, providing consultant services to a
20 manufacturer that could compromise the
21 independence of the testing process, and
22 prohibition on soliciting or receiving

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1 gifts, directly or indirectly, from a
2 voting system manufacturer.

3 Also, a certification that the
4 lab possesses specific financial resources
5 to properly use and maintain its test
6 quality and facility, and a certification
7 that the lab operates a record-keeping
8 system to maintain all test-related
9 information on a voting system for a
10 period of five years after the last test

11 of a particular system.

12 EAC has requested that SysTest
13 and iBeta provide the requested
14 information to the Commission no later
15 than February 15, 2007 to review before
16 the Commission's formal vote. Because EAC
17 staff expects it will conclude information
18 gathering and review of documentation for
19 these labs shortly, it appears to be the
20 appropriate time to officially end work
21 related to the accreditation of labs under
22 our interim lab program, which we

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1 discussed earlier this morning, terminate
2 any applications as of close of business
3 March 5, 2007. This date corresponds
4 directly to the date on which EAC has
5 directed Cyper, Inc. to correct all
6 non-conformity issues found during the two
7 lab assessments conducted by the EAC.

8 Thank you. We're ready for

9 questions, at your pleasure.

10 CHAIR DAVIDSON: Thank you.

11 First, I will open it up to questions.

12 Commissioner Hillman.

13 COMMISSIONER HILLMAN: Thank

14 you. Mr. Alderman, I want to put the EAC

15 accreditation program in the context of

16 the larger role of accreditation programs.

17 It is the first time that the U.S. Federal

18 Government has accepted the responsibility

19 to accredit the laboratories, that we test

20 voting systems against the voting systems

21 guidelines. While the Government has been

22 adopting guidelines previously, none as

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1 standards. The process has been that

2 there's certain kinds of lab accreditation

3 to test labs to everything from asbestos

4 to appliances we use in our homes,

5 automobiles, and so on.

6 Could you just sort of, in a

7 conversation with me, without too much
8 technical reference to codes, establish
9 where the EAC's accreditation program fits
10 in that world of accreditation.

11 MR. ALDERMAN: Okay.

12 It would be nice if there was an
13 accreditation book for dummies, that type
14 of thing, but actually there is a
15 Conformity 101 Power Point presentation we
16 can send to you that may help. But, yes,
17 conformity assessment is a very general
18 term which includes not only laboratories'
19 accreditation, but product certification,
20 like on your lamp at home, they put the UL
21 stamp and that type of thing. That's kind
22 of what we're doing with the voting system

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1 is a compilation of laboratory
2 accreditation and certification, as well
3 as inspection, which is another ISO
4 standard.

5 As I said, conformity assessment
6 is a very general term. All laboratory
7 accreditation is a finding of confidence
8 that a lab is capable of performing a
9 specific test method within that. It's
10 not a guarantee that that particular test
11 report is accurate. It's not a guarantee
12 that a product that is tested in that
13 laboratory complies with any product
14 specifications.

15 So in this framework under HAVA,
16 we have a laboratory accreditation aspect,
17 which NVLAP is doing, and the EAC's
18 responsibility, which is the certification
19 aspect, which is kind of reviewing and
20 tracking the actual products which the
21 laboratories are testing.

22 COMMISSIONER HILLMAN: Okay.

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1 EAC works with NIST, in particular, with
2 NVLAP, to receive recommendations and

3 NVLAP does --

4 MR. ALDERMAN: Evaluation.

5 COMMISSIONER HILLMAN: Okay. In
6 the larger world of accreditation, who
7 else does what NVLAP does?

8 MR. ALDERMAN: Well, in the
9 United States, as far as general
10 accreditation bodies, there's probably
11 less than ten, but there are hundreds of
12 accreditation bodies which are more center
13 specific. In the Department of
14 Agriculture, there's accreditation
15 programs that test -- that accredit peanut
16 testing labs, but as far as accreditation
17 bodies in the United States, ten or so,
18 but throughout the world, there's
19 hundreds.

20 COMMISSIONER HILLMAN: What
21 makes accreditation of the labs that EAC
22 would use to test voting systems different

1 or unique from other accreditation

2 processes?

3 MR. ALDERMAN: Well, for these

4 general -- the ten accreditation lab

5 accreditation bodies that I am referring

6 to, all have to meet a certain

7 international requirement also, and apply

8 17025, but any accreditation body has to

9 go beyond those general requirements and

10 look into specific requirements of a test,

11 go into a laboratory and determine those

12 people, the analysts are knowledgeable and

13 performing the test. So you have

14 additional technical criteria on top of

15 17, but the process itself is general.

16 Each accreditation body may meet the

17 criteria separately.

18 COMMISSIONER HILLMAN: And

19 before the EAC program, had NVLAP done

20 assessment, evaluation, had it done

21 evaluation of labs to test voting systems

22 before the EAC program?

1 MR. ALDERMAN: No, just some EMS
2 and cryptographic modules.

3 COMMISSIONER HILLMAN: And I
4 want to get to the time frame that you
5 laid out from June, 2004, when the first
6 notice went out about what was going to
7 happen until we received the two
8 recommendations in January. That was
9 about 30 or 31 months in total.

10 Now, was that a little longer
11 than normal for a brand new program like
12 this, or was that about right on time?

13 MR. ALDERMAN: Normally, I would
14 say it's a little longer than a normal
15 program. A normal program has
16 specification test methods and very
17 developed criteria to do that. With the
18 voting systems, the test methods
19 themselves, the voting system guidelines,
20 has specifications and requirements, is

21 not a set of test suites that all
22 laboratories use to test these voting

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1 systems, which NIST is working on test
2 suites which will be hope helpful but also
3 very much to the accreditation body.

4 So considering the fact that
5 they had to develop a new technical
6 handbook from basically scratch, I would
7 say it's probably in line, but it is
8 probably longer than normal.

9 MR. HANCOCK: Commissioner, can
10 I just add a little bit to what Dave is
11 saying? You know, the Government, the
12 United States Government, does have other
13 agencies that do conformity assessment in
14 a number of areas, as David was noting.
15 The difference is, from a public
16 perspective, is those are very mature
17 programs. For example, the FCC's
18 programs, FAA's programs, they have been

19 operating for years a number of years.

20 And they have been through all the sort of

21 problems with growth and things that

22 happen at the beginning of a program. And

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1 I think there is some expectation, you

2 know, perhaps unfairly, that the EAC's

3 program should be at that level of

4 maturity from the outset, and it just

5 can't happen.

6 We're doing the best we can.

7 And I think Dave will probably agree with

8 that, from NIST's perspective as well, but

9 there is a difference.

10 COMMISSIONER HILLMAN: Thank you

11 for that. Clearly, EAC ought to partner

12 with NIST's long history of experience and

13 work.

14 I have to say, Commissioners,

15 that it's amazing of the 200 some odd

16 years we have been voting in the United

17 States, we have a very infant program
18 dealing with this very critical issue.
19 And so you're absolutely right, Brian,
20 that the pressure is on us to perform like
21 we've been doing this for 50 or more years
22 longer than NIST has been around, when the

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1 fact of the matter is, I think any
2 industry that has been through what the
3 EAC is going through with respect to new
4 programs for lab accreditation testing,
5 certification, whatever nuances they may
6 have, have probably been through far worse
7 than what we're going through and probably
8 had ten times more resources available
9 than we have.

10 I do have other questions about
11 the specific recommendation that Brian
12 made, but I'll wait to see if either of
13 you don't raise it, Madam Chair, then I
14 will bring it up later.

15 CHAIR DAVIDSON: Mr. DeGregorio.

16 COMMISSIONER DEGREGORIO: Thank
17 you. Mr. Alderman, I remember meeting you
18 three years ago to talk about this
19 program. And I know that NIST has worked
20 very hard and worked in partnership with
21 EAC to get us where we are today, and to
22 your recommendations.

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1 I have a couple of specific
2 questions, just to make sure that I
3 understand on the record. The
4 accreditation, the lab that you are
5 recommending to us right now that we are
6 under some review, the criteria in a
7 contract you have used is specified in the
8 voting system standards of 2002, VVSG of
9 2005, right?

10 MR. ALDERMAN: That's correct.

11 COMMISSIONER DEGREGORIO: So in
12 the renewal, because you talk about you're

13 going to continue to evaluate those labs,
14 so if this Commission adopts perhaps
15 sometime this year a new iteration of the
16 VVSG, that will be the criteria that would
17 be used when they continue to review these
18 laboratories for accreditation?

19 MR. ALDERMAN: The answer is
20 yes, I am sure the laboratories will apply
21 and be recognized for those requirements
22 that are needed under the act. The answer
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1 is yes, there is usually some kind of
2 transition time involved.

3 COMMISSIONER DEGREGORIO:
4 Commissioner Hillman's questions were very
5 appropriate to have us all understand how
6 this program works and how NVLAP works.
7 Let me ask another question though,
8 related to that, and that is, this
9 fee-supported program, because I think
10 there's been discussion about whether the

11 EAC should be paying for this type of
12 accreditation, and we're not authorized by
13 Congress to do that, but this has always
14 been a fee-supported program since 1976,
15 as I understand. Is that correct?

16 MR. ALDERMAN: I don't know if I
17 can skip all the way to 1976, but when I
18 joined in '88, it was a fee-supported
19 program. It involved a budget annually,
20 based on expenses and the number of labs
21 that would participate. So, yes, there is
22 annual application and fees that labs pay
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1 for the operation of NVLAP, and technical
2 visits, and that type of thing.

3 COMMISSIONER DEGREGORIO: In
4 response to questions by Commissioner
5 Hillman, you talked about the time period
6 to get this project completed. I know
7 that we were in discussions immediately
8 when EAC took office in 2004 on this

9 issue, but HAVA required in Section 231
10 that NIST make these recommendations to us
11 within six months of the adoption of the
12 VVSG, that we would have received
13 recommendations by June of 2006.
14 Obviously, it's taken longer than that.

15 Do you see in the future, now
16 that we're establishing this criteria and
17 we have staff involved, and certainly we
18 have the funds today that we didn't have
19 back then perhaps that caused this delay,
20 that when other labs come before NIST to
21 be considered by NVLAP for accreditation,
22 the process will go quicker?

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1 MR. ALDERMAN: Absolutely. A
2 lot of the time was in start-up time,
3 identifying the technical expertise that
4 we were going to do, so that the labs
5 apply -- there is what we call an adequacy
6 review of the quality system, that type of

7 thing, to see if we're somewhere in the
8 ball park, ready for pre assessment, and
9 we move on from there. So the answer is
10 yes.

11 COMMISSIONER DEGREGORIO: And it
12 has been noted that we have already
13 recommended two labs for the EAC which is
14 under consideration by our staff, and that
15 there are four others that we're looking
16 at.

17 Optimistically, if per chance
18 all six receive accreditation by the EAC,
19 it seems to me that that's going to be a
20 big step forward, because I know that I
21 have heard in the past from state election
22 officials and from local election

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1 officials and from vendors that its been a
2 problem that the opportunities to have
3 equipment tested has been limited because
4 of the limited number of labs that have

5 been accredited.

6 So this is a positive step. And
7 I think, certainly, it is more thorough
8 than certainly the NASED program in the
9 past. So I think that's very helpful, and
10 I appreciate the work that you have done
11 on this, David. I know that you're an
12 expert, and we talked about this. It's
13 mind boggling. I won't go into the
14 details, but I think you and NIST have
15 done a very good job to support the EAC.
16 I know Mr. Hancock has worked very closely
17 with you and with the leadership of the
18 EAC to get this working.

19 MR. ALDERMAN: Thank you, very
20 much.

21 CHAIR DAVIDSON: It's my turn,
22 and let's see if I can kind of -- there's

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1 some thing that, obviously, we have heard
2 about in the press that definitely we want

3 to get information out in time at this
4 time. And also in your experience with
5 NIST and NVLAP, what you put out -- let me
6 see if I can word that more exactly.

7 What is your normal process,
8 what do you offer as documentation after
9 you have reviewed whether it's labs or
10 reviewed criteria?

11 MR. ALDERMAN: NVLAP publishes
12 on the web site whether it's accredited,
13 releases the certificate of accreditation.
14 NVLAP procedures are pretty detailed about
15 how they treat information from the labs,
16 how they attempt to keep it confidential
17 and out of the public domain. However,
18 because of the uniqueness, I think, of
19 this particular program and the need for
20 transparency, obviously, NIST has
21 published the on-site assessment report
22 and the laboratory's response to that

1 report.

2 As I mentioned earlier, it was
3 on the web site. Normally, those things
4 are not released, are kept confidential,
5 mainly because labs have used them for
6 marketing against other labs when, in
7 fact, all it is, is that the labs have met
8 a minimum set of criteria.

9 CHAIR DAVIDSON: Okay. Is it
10 normally your process to identify the
11 individuals that have asked for the
12 review? You know, if I seem to remember,
13 that was not something that you put on
14 your web site in other programs.

15 MR. ALDERMAN: Normally, we do
16 not release that a lab has applied.
17 However, NVLAP does work with regulators.
18 We share more freely that type of
19 information, but, normally, the fact that
20 a lab has applied is not even shared.

21 CHAIR DAVIDSON: And I want to

22 say we do appreciate -- we sent a letter

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1 to Dr. Jeffries asking him to make as much
2 of the program transparent as possible,
3 and we do appreciate your move to do that,
4 because the public is definitely wanting
5 information, and as much as we can put out
6 there. It definitely is important, and I
7 do appreciate working with you and getting
8 all that available that we could possibly
9 get available. So thank you. I
10 appreciate that.

11 Brian, in your recommendation
12 that you gave, because we have received
13 two labs from NIST that they have
14 recommended that we move forward on, how
15 soon do you think that we'll be receiving
16 the information we have requested from the
17 test laboratories, that additional
18 information that we're requiring, how soon
19 do you think that we'll be seeing that?

20 MR. HANCOCK: As I noted, we
21 gave the labs a date of February 15th by
22 which to supply that information to us.

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1 We have not received notification that the
2 labs would be late or that they would have
3 any problem meeting that date. So I do
4 expect to have it on by on or before that
5 date, in fact.

6 CHAIR DAVIDSON: Can you tell me
7 how long you feel it will take you to
8 assess that data, to make recommendations
9 to the Commission whether we accept them
10 as a laboratory in moving forward with our
11 program?

12 MR. HANCOCK: You know this is,
13 obviously, a priority. This will be done
14 as soon as possible. I would assume that
15 if the laboratories give us everything we
16 have requested, we could get that done
17 very quickly, within certainly a matter of

18 a week or so.

19 CHAIR DAVIDSON: Very good. So
20 it's possible that we have labs ready to
21 start work by the end of the month?

22 MR. HANCOCK: That would be

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1 possible, yes, ma'am.

2 CHAIR DAVIDSON: Okay, thank
3 you. I think -- let's see, you know, I
4 think it's important that we kind of
5 briefly mention again what a lab must meet
6 to be judged in compliance with NVLAP.
7 Just briefly, can you mention those
8 things. I think that is very important.

9 MR. ALDERMAN: Well, every lab,
10 whether asbestos, voting systems, EMC
11 carpeting testing, has to comply with ISO
12 17025. On top of that, there is technical
13 criteria that NVLAP develops through each
14 program.

15 In this case, that criteria is

16 contained in Handbook 150-22. There is,
17 obviously, going to be some more refining
18 in that once the NIST test suite is
19 delivered.

20 CHAIR DAVIDSON: I was going to
21 ask that, will that make this process a
22 lot better, and as you say, easier, but it
90

1 should make it a lot more come complete,
2 if they are all testing to the same thing.

3 MR. ALDERMAN: It is easier to
4 test because you have a common set of
5 criteria that's there. You don't have to
6 make a determination that the procedures,
7 proprietary procedures that a lab is
8 performing meets the requirements.

9 As Mr. Freeman mentioned,
10 validation of tab methods. Here, once the
11 test suites are established, that will
12 already have been done so we don't have to
13 spend time going that. We'll be able to

14 evaluate each lab to the same test

15 standards and their ability to perform.

16 CHAIR DAVIDSON: Obviously, what

17 I am understanding then by this being a

18 brand new program, there is so much we can

19 do to improve it.

20 Brian, I guess the last question

21 I have for you right now is, in the

22 future, as we see how we can improve our

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1 portion of the program, how soon -- once

2 something comes up, how soon can we react

3 to making our program stronger, getting it

4 out to the public?

5 MR. HANCOCK: Well, I think we,

6 obviously, know, Madam Chair, that this is

7 a high priority program. Everything

8 related to this program needs to be done

9 as quickly as resources will allow, and

10 with as much transparency as we can. I do

11 intend to work very closely with Dave and

12 the other folks at NVLAP, as they look to
13 make the changes that they think are
14 necessary to the Handbook 150-22. There
15 are some inaccuracies there, some tweaks
16 that do need to be made.

17 We will work again, be working
18 hand in hand with them, as quickly as
19 possible.

20 CHAIR DAVIDSON: Okay.
21 Commissioner Hillman, you had one other
22 question?

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1 COMMISSIONER HILLMAN: Well, I
2 do have a couple questions because I'm
3 thinking that I would offer a motion in
4 response to Brian's recommendation about
5 the determination of the interim program.
6 But before I do that, I need to clarify a
7 couple things.

8 One is, this is not directly to
9 the motion, but it is sort of informative.

10 The experiences that vendor voting system
11 manufacturers have been through getting
12 their systems qualified under the NASED
13 program and the experiences they will have
14 getting their voting systems certified
15 under the EAC program, can you kind of
16 describe what some of the major dynamics
17 will be, in terms of what -- and I
18 understand that the contents of the
19 guidelines, obviously, will drive a lot of
20 that, but just in terms of steps,
21 processes, transparency issues, the whole
22 nine yards?

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1 MR. HANCOCK: Thank you.
2 I think one of the most important things
3 that we need to mention here is that the
4 voting systems, in fact, all of the voting
5 systems will be required to come back in
6 through the EAC's process and be tested
7 through accredited labs before the EAC

8 certification of any voting system from a
9 manufacturer.

10 The Commission, I think, made a
11 very pointed effort when the certification
12 manual was developed to note that we would
13 not be grand fathering any of the NASED
14 qualified voting systems. I believe the
15 document states that those qualified
16 voting systems will retain whatever value
17 that each of the states choose to give it.
18 But as far as we're concerned, we're going
19 to look at everything brand new, starting
20 out with a clean slate. And I think
21 that's extremely important for everyone to
22 be aware of.

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1 The process, while it sort of
2 looks on the surface very similar in that
3 we'll be testing systems, and at the end,
4 there will be a qualification or
5 certification come out of it, the details

6 in between will be significantly more
7 rigorous and certainly more transparent
8 than was the case under the NASED program.
9 You have said this many times, their
10 program was not under funded, it was not
11 under funded at all. And we do enjoy
12 funding for this and we do enjoy the fact
13 that the Commission holds this as a high
14 priority.

15 Our 78-page certification manual
16 goes into all the details of what we're
17 requiring, but some of the initial things
18 would be, as our general counsel noted
19 earlier, to first have the manufacturers
20 register with us and give us some very
21 basic information before they can even put
22 a system forth for testing and

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1 certification.

2 You know, we're going to also
3 have a very stringent quality management

4 process in our program where we'll be able
5 to go out and inspect the manufacturing
6 facilities of the vendors to make sure
7 that the products that they are putting
8 out and giving to our election officials
9 are the same products that the EAC has
10 certified. That's also very important.

11 There are a number of things like
12 that that will improve the process,
13 Commissioner.

14 COMMISSIONER HILLMAN: Okay.
15 What happens to the accreditation that the
16 labs receive under our interim program if
17 we terminate the interim program on March
18 5th?

19 MR. HANCOCK: As the recommended
20 document we sent out initially,
21 essentially, the date would be December
22 17, 2007 because that is the

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1 implementation date in the 2005 VVSG that

2 requires that after that date, all voting
3 systems be tested to the 2005 document.
4 Obviously, SysTest Labs, while they were
5 an interim lab, has already been
6 recommended to us as a full VSTL for our
7 program, assuming that they get voted for
8 EAC accreditation.

9 COMMISSIONER HILLMAN: Let me
10 see if I understand. The national interim
11 accreditation does not end on March 5th
12 when we end the program?

13 MR. HANCOCK: The accreditation
14 itself would not end, that's correct.

15 COMMISSIONER HILLMAN: And were
16 there any modifications by the lab that
17 had entered accreditation during the
18 period leading up to November?

19 MR. HANCOCK: Yes, but very few.
20 There were, I believe, three products that
21 came in to have modifications tested, and
22 those were done.

1 COMMISSIONER HILLMAN: And any
2 system, qualified NASED, any modifications
3 that were performed or certified under the
4 interim program, those stay in place, is
5 that correct, until the machine stops
6 being used?

7 MR. HANCOCK: Actually not.
8 Even our pre election interim
9 certification of products, those products
10 will also, like everything that NASED has
11 qualified, will have to come back in for
12 full testing under our program.

13 COMMISSIONER HILLMAN: So every
14 single voting system in use in the United
15 States in use between now and December
16 31st of 2007 will have to come back under
17 the EAC testing and certification program?

18 MR. HANCOCK: Any manufacturer
19 that would like an EAC certification of
20 any of his products does have to bring it
21 in for full testing.

22 COMMISSIONER HILLMAN: All their
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1 systems?

2 MR. HANCOCK: Yes.

3 COMMISSIONER HILLMAN: And with
4 this March 5th date -- I always get
5 nervous when I hear staff say probably,
6 and we might be able to.

7 So does the EAC staff have
8 everything it needs in order to complete
9 the consideration process of the two labs
10 that NVLAP has recommended to EAC so that
11 the Commissioners would be able to take
12 appropriate action before March 5th?

13 MR. HANCOCK: We expect to have
14 that, yes. Again, the date that we
15 requested the information is February
16 15th.

17 COMMISSIONER HILLMAN: I don't
18 mean the information. I mean what EAC
19 needs to have to get the review of that

20 information done.

21 MR. HANCOCK: Yes, absolutely.

22 COMMISSIONER HILLMAN: And so

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1 short of the kind of snowfall that New
2 York is getting with six and seven feet of
3 snow, we should be okay that if we vote
4 today to end the program on March 5th,
5 we're not going to find ourselves on March
6 6th with a problem?

7 MR. HANCOCK: Even with the
8 seven-foot snowfall, we will have that in
9 place, assuming we get all the information
10 we need.

11 COMMISSIONER HILLMAN: That's
12 the can-do spirit I like, as long as the
13 Fed-Ex and outside postal systems work.

14 With that, Madam Chair, I think
15 I am prepared to make a motion that the
16 EAC's interim accreditation -- laboratory
17 accreditation program, is that the correct

18 phrase, be closed effective March 5, 2007.

19 CHAIR DAVIDSON: Do I hear a
20 second?

21 COMMISSIONER DEGREGORIO:
22 Second.

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1 CHAIR DAVIDSON: Hearing the
2 motion and second, I will open it up for
3 questions or discussion.

4 COMMISSIONER DEGREGORIO: Madam
5 Chair, I don't have any. I think that
6 Commissioner Hillman has clarified, for
7 all of us and the public out there
8 listening, the intent of this program. I
9 think Mr. Hancock has stated now, on the
10 record, that he expects to have
11 recommendations to us before March 5th.
12 Is that correct, Mr. Hancock?

13 MR. HANCOCK: Yes.

14 CHAIR DAVIDSON: Mr. Hancock,
15 there is only one thing; do you feel that

16 we have asked you all of the questions and
17 all the information is out so that the
18 public can understand the difference
19 between the interim and now we're going to
20 the full, do you feel that there needs to
21 be anything else said before the record?

22 MR. HANCOCK: I think we have
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1 done a very good job covering things. I
2 think the only think I might add would be
3 that, as we know, we have given Cyper,
4 Inc. until that March 5th date to provide
5 us with their information. We will,
6 assuming we get information from them, we
7 will review and process the information we
8 get from them, regardless of that data,
9 assuming it comes in before the deadline.

10 CHAIR DAVIDSON: And, obviously,
11 that will assist, if they get it in to us
12 by the 5th, it would be assessed after
13 that point, and we would be getting

14 information out to the public after that
15 date?

16 MR. HANCOCK: Yes.

17 CHAIR DAVIDSON: I just want to
18 make sure that the public understands it
19 won't be decided on the 5th. That's when
20 we expect their information in, and then
21 this will be assessed after that time?

22 MR. HANCOCK: Correct.

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1 CHAIR DAVIDSON: Okay. Seeing
2 no another questions or discussion, I call
3 for the vote. All those in favor say I.
4 So noted. Hearing no opposition, the
5 motion carries.

6 Thank you, very much, gentlemen,
7 both of you. We definitely appreciate
8 your briefing, and I think that the public
9 will definitely appreciate what you have
10 done and brought to light at this meeting.
11 Thanks again.

12 It's hard to be on down the list
13 of our panelists assisting through
14 everything else. We do appreciate your
15 willingness to be here all day with us and
16 making sure you were here on time.

17 So in starting this one, this
18 has been a highly anticipated report. We
19 received the Eagleton draft in June of '06
20 and we immediately realized that the data
21 presented more questions to us than
22 answers. For instance, this research

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1 focused on the 2004 cycle. Many states
2 have changed their voter ID since that
3 time, so is looking at only one election
4 cycle sufficient? Do we need to compare
5 two presidential cycles to get a more
6 complete picture?

7 Since we have limited staff and
8 resources, we were unable to immediately
9 resolve these questions. Our top priority

10 at that time was the lab accreditation
11 that you have been sitting through that
12 process, and finishing up with our interim
13 process and our voter system certification
14 process. In addition, we had to focus on
15 our efforts at getting more information
16 out to election officials and the public
17 concerning the November election,
18 especially because many jurisdictions were
19 using new voting equipment this last
20 election. Now that we have launched those
21 programs and we're once again turning our
22 attention to our research programs, we

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1 look forward to hearing from our research
2 director, Karen Lynn-Dyson, about this
3 project, research project.

4 And let me also introduce Thomas
5 O'Neill and Tim Vercellotti, hereafter
6 known as Tim. I asked our Italian to help
7 me make sure I pronounce it correctly, and

8 he told me before the meeting that I would
9 join the group of not pronouncing it
10 correctly, so I don't feel too bad. They
11 are here today to pick up where we have
12 left off and to give us an overview, a
13 brief overview. Obviously, we know it's
14 very brief considering all the research
15 that you have done regarding the voter
16 identification project.

17 So I will go ahead and open it
18 up, and Karen, you can start off.

19 MS. LYNN-DYSON: Well, good
20 almost afternoon.

21 CHAIR DAVIDSON: It almost is.

22 MS. LYNN-DYSON: Let me just

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1 give you a few contextual remarks
2 regarding the contract.

3 In late May, 2005, the contract
4 was awarded to the state university at
5 Rutgers, the Ohio State University, Moritz

6 School of Law, as its subcontractor. The
7 portion of the contract that was awarded
8 related to the study and analysis of voter
9 identification requirements, was to first
10 collect and analyze state legislative
11 administrative procedures and court cases.
12 Also, to create a state-by-state
13 compendium of the legislative procedures
14 and litigation review to perform an
15 analysis of how voter identification
16 requirements were implemented around the
17 country, and to recommend alternative
18 approaches related to the future
19 implementation of HAVA voter
20 identification requirements.

21 These recommendations were to be
22 based on a literature review of research

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1 results, a review of data on voter
2 identification, and a diagnosis of the
3 problems and challenges related to voter

4 identification requirements. This
5 contract was extended on two occasions to
6 allow for additional review, including an
7 EAC-initiated review conducted by an
8 independently-convened panel of experts
9 who provided input to us and to Eagleton
10 on the first draft of this statistical
11 analysis of voter identification
12 requirements.

13 The Eagleton Institute of
14 Politics submitted its draft report to EAC
15 on best practices to improve voter
16 identification requirements on June 28,
17 2006. Findings from Eagleton's study of
18 provisional voting that was a part of
19 EEG's overall study were included in EAC
20 Best Practices On Provisional Voting,
21 which this agency published in October,
22 2006.

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1 So with that background, I turn

2 things over to our contractors,

3 Mr. O'Neill and Mr. Vercellotti --

4 Dr. Vercellotti.

5 CHAIR DAVIDSON: First, I'm

6 going to introduce Tim Vercellotti. I

7 know I goofed that up -- but he conducts

8 quality research studies and opinions on

9 voting behavior as an assistant research

10 professor of the Eagleton Institute of

11 Policies at Rutgers.

12 Next, I am introducing Thomas

13 O'Neill. He is the contracting director

14 in the EAC research project on voter

15 identification. Along with his work with

16 the EAC, Mr. O'Neill actively consults on

17 issues of public policy, organizational

18 development, and group process. Until his

19 retirement in January of 2005, Mr. O'Neill

20 served as the president of the Partnership

21 of the New Jersey for twenty years. I'm

22 going to start with you Mr. O'Neill. Tom,

1 if you would start us off on your
2 presentation, and I think your
3 presentations are kind of together, so we
4 will start O'Neil.

5 MR. O'NEILL: Tim and I are
6 going to do a duet. I was delighted to
7 hear your characterization of our report
8 as raising more questions than providing
9 answers, because that is exactly what it
10 did. And I think it reflects the state of
11 understanding of the rather complex issues
12 involved with voter ID.

13 Voter ID requirements are just
14 one set of election rules that affect
15 turnout. Social scientists have long
16 studied how rules affect participation in
17 general elections. The general view today
18 is that the individual citizen chooses
19 whether to vote by comparing costs and
20 benefits. The benefits of voting are

21 fairly stable and they are hard to
22 specify, given the remote probability that
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1 any one vote will make a difference in an
2 election. But whatever the benefit may be
3 as the cost of voting, for example, time,
4 hassle, acquisition of information,
5 increase the likelihood that a citizen
6 will vote decreases.

7 We conducted our research before
8 last year's presidential election. That
9 was a period when the debate over voter ID
10 requirements was sharp and polarized. We
11 saw our charge from the EAC as not to
12 enter the national debate, but rather
13 explore if an empirical study could
14 suggest how we might estimate the effects
15 of different voter ID requirements on
16 turnout. That analysis, of course, would
17 be a sensible first step to assess
18 tradeoffs between ballot security and

19 ballot access, and provide valuable
20 information for all parties to the debate.

21 A voting system that requires
22 voters to produce an identity document or
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1 documents may prevent the ineligible from
2 voting. It may also prevent eligible
3 voters from casting a ballot. If the ID
4 requirement of a ballot protection system
5 blocks ineligible voters from the polls at
6 the cost of preventing eligible voters who
7 lack the required forms of identification,
8 the net integrity of the ballot may not
9 have been improved.

10 A key part of our work was a
11 statistical analysis to examine how
12 turnout may vary under different voter ID
13 requirements. We used this statistical
14 study to develop a model to illuminate the
15 relationships between voter ID
16 requirements and turnout. The model's

17 findings and limitations suggest avenues
18 for further research and analysis that may
19 assist the EAC and the states as they
20 explore policies to balance the goals of
21 ballot integrity and ballot access. Tim
22 Vercellotti led that phase of our

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1 research, and he is going to describe his
2 methods and conclusions.

3 MR. VERCELLOTTI: Good day,
4 Madam Chair, Commissioner Hillman, and
5 Commissioner DeGregorio. I will just try
6 to briefly summarize the approach we took,
7 in terms of the data analysis, and our
8 findings.

9 Our research included an
10 examination of variation in turnout based
11 on voter ID requirements in the 50 states
12 and the District of Columbia as of the
13 presidential election of 2004. We
14 examined this question using aggregate

15 data at the county level gathered from the
16 United States Census, as well as voter
17 turnout data and individual level data
18 from the November, 2004 Current Population
19 Survey conducted each month by the Bureau
20 of Labor Statistics.

21 Drawing from the research
22 conducted by the Moritz College of Law in
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1 a review of statutes regarding voter
2 identification, we were able to classify
3 the states as following into one of five
4 voter identification categories. As of
5 the presidential election of November,
6 2004 voters either had to state their name
7 at the polls, sign their name, match their
8 signature to a signature already on file,
9 provide a non-photo form of identification
10 or provide a photo identification.

11 But election laws in numerous
12 states offered exceptions to these

13 requirements if individuals lack the
14 necessary form of identification. And
15 laws in many states set a minimum standard
16 that a voter had to meet in order to vote
17 using a regular ballot as opposed to a
18 provisional ballot. Thus it is also
19 possible to categorize states based on
20 their minimum requirement for voting in
21 November of 2004. In that period, the
22 categories were somewhat different in that

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1 none of the states required photo
2 identification as the minimum standard for
3 voting with a regular ballot. Four
4 states, however, did require voters to
5 swear an affidavit as to their identity.
6 So taking into account the five minimum
7 types of requirements for the states, they
8 would fall into the following categories;
9 again, giving one's name at the polling
10 place, signing one name's, matching one's

11 signature to a signature on file,
12 providing a non-photo identification, or
13 swearing an affidavit as to identity.

14 Looking first at the aggregate
15 data, we found that the average turnout in
16 states requiring photo identification as a
17 maximum requirement was 58.1 percent of
18 citizens of voting age compared to 64.2
19 percent in states that required voters
20 simply to give their name at the polling
21 place. The differences were slightly
22 smaller when we examined turnout in the

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1 state with 60.1 percent of voters turning
2 out in states requiring affidavit compared
3 to 63 percent that required voters to give
4 their name as the minimum requirement.

5 What we know from the voting
6 literature, and that is where I have my
7 training, analysis of aggregate data, in
8 order to be complete or as fully specified

9 as possible, also need to take into
10 consideration a number of contextual
11 factors about elections in specific
12 states. For example, in a state that's
13 considered a presidential battleground
14 state, that may drive voter turnout.
15 Is this a state with a highly competitive
16 gubernatorial or senate race, the length
17 of time between the close of the
18 registration period and Election Day, and
19 the demographic composition of the county,
20 in terms of race and ethnicity, age, and
21 household income. That can also
22 influence turn out. All of these have

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1 been shown in the political science
2 literature to affect voter turnout.

3 Controlling for these factors,
4 looking at maximum requirements for voter
5 identification, we found a slight negative
6 association between voter turnout in

7 states where voters had to show a non-photo
8 ID or provide a signature match. We did
9 not find an association between requiring
10 a photo ID and voter turnout, in terms of
11 the maximum requirements.

12 Looking at the minimum
13 requirements, those models showed no
14 significant associations between requiring
15 various forms of ID and variation in
16 turnout. Now, that's at the aggregate
17 level. We also looked at factors like
18 being married, we looked at being in the
19 work force, actively seeking employment,
20 will affect probability that you will turn
21 out to vote.

22 So we turn to the November, 2004
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1 current population survey conducted by the
2 Bureau of Labor Statistics. In November
3 of even numbered years, that survey
4 includes a component of questions given

5 specifically to individuals who identify
6 themselves as citizens of the United
7 States, and then further, citizens who
8 identify themselves as being registered to
9 vote prior to the election. We found the
10 percentage of individuals who turned out
11 to vote who identified themselves as
12 citizens and identified themselves as
13 registered voters, they were 2.9 percent
14 less likely to say they turned out in
15 photo ID states compared to states that
16 simply required voters to state their name
17 at the polling place.

18 Looking at the minimum
19 requirements, we found that in states
20 where individuals had to swear an
21 affidavit as to their identity,
22 respondents in those states, these were

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1 citizens who identified themselves as
2 registered voters, they were four percent

3 likely to say they had voted in the
4 November, 2004 election compared to
5 registered voters in states where
6 individuals simply had to give their name
7 at the polling place. We broke this down
8 further by education level, by race, by
9 ethnicity. All of those findings are in
10 the draft report that we submitted on June
11 28th, as well as far more additional
12 detail to that report.

13 To summarize, what we found,
14 based on race and ethnicity, we looked at
15 African-Americans, Hispanics and
16 Asian-American. We found no statistically
17 significant relationships between the
18 probability of having said one had voted
19 and living in a state that required photo
20 ID.

21 We did, however, find
22 statistically significant relationships

1 between having said one voted and living
2 in a state that required non-photo ID. In
3 five or six statistical models, taking a
4 look at the experiences of
5 African-Americans, Hispanics and
6 Asian-Americans, all of those groups were
7 less likely to say they had turned out to
8 vote in states that required non-photo ID,
9 compared to states that required voters to
10 simply state their names at the polling
11 place.

12 Looking at the experiences of
13 white voters, we do find a statistically
14 significant relationship between living in
15 a state requiring photo ID and being less
16 likely to say you had voted in a November,
17 2004 election. These results are counter
18 intuitive to anyone who is involved in the
19 debate over photo ID in the context of
20 race and ethnicity.

21 Some of the participants in that
22 debate predict that minorities,

1 African-Americans and Hispanics, would be
2 more likely to be impacted by photo ID
3 requirements than white voters. We did
4 not find that in our research. There are
5 a number of potential explanations for why
6 that was the case, some of them simply
7 mathematical.

8 There are over 44 non-white
9 respondents in the sample. It is easier
10 to find statistical significance for a
11 group with numbers that large than for the
12 smaller numbers of individuals who are
13 African-American, Hispanic, or
14 Asian-American. Another possible
15 explanation is that of the five photo ID
16 states, all five of them have fall backs
17 in order to cast a regular ballot, not a
18 provisional ballot. So there was no
19 ironclad photo ID requirement in November
20 of 2004. So to my mind, as a scholar on

21 voting behavior, I say the jury is still
22 out on that part of the debate. And we
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1 know that there will be ample opportunity
2 to take a look, particularly in the
3 context of states like Indiana before and
4 after the implementation of photo ID
5 requirements. That aspect of our research
6 is still out there waiting to be answered.

7 That concludes my summary of the
8 statistical analysis. And I will turn the
9 floor back over to Tom O'Neill.

10 MR. O'NEILL: Thank you, Tim.
11 It was a key phrase that Tim just uttered,
12 which is the existence of places like
13 Indiana and other states which adopted a
14 photo ID and had one previously is an
15 opportunity for further research,
16 undertake that research.

17 The statistical analysis
18 suggests that stricter voter ID

19 requirements can be associated with low
20 voter turnout. It was not designed,
21 however, to look at the other side of the
22 balance equation; do tighter ID

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1 requirements reduce multiple voting or
2 voting by ineligible voters. The scope of
3 our research, as defined by the EAC,
4 excluded assessing the dynamics and
5 incidence of vote fraud.

6 We believe that, for now, the
7 best practice for the states may be to
8 limit requirements for voter ID to the
9 number needed to prevent duplicate
10 registration and ensure eligibility.
11 Election law should provide the clarity
12 and certainty needed to forestall
13 destabilizing challenges to election
14 outcomes. Absent a sound, empirical basis
15 for striking a wise balance between voter
16 ID and ballot access, legal challenges may

17 increase, not just to the process, but to
18 electoral outcomes.

19 The analysis of litigation
20 conducted by the Moritz College of Law for
21 our research suggests that the courts will
22 look more strictly at requirements that
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1 voters produce a photo ID in order to cast
2 a regular ballot, than at non-photo ID
3 laws. The courts have used a balancing
4 test to weigh the legitimate interest in
5 preventing election fraud against the
6 citizen's right to privacy, protecting
7 Social Security numbers from public
8 disclosure, for example, and the
9 reasonableness of requirements for
10 identity documents.

11 To strike that balance requires
12 a more precise understanding of how voter
13 ID requirements affect turnout, and a
14 first step in that direction would be to

15 encourage and require states to collect
16 and report additional data, including
17 reasons potential voters are required to
18 cast a provisional ballot and the reasons
19 for rejecting provisional ballots to show
20 the role played by voter ID in evaluating
21 provisional ballots.

22 Now, we recognize that the

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1 polarized debate over voter ID has raised
2 stakes on this issue and put heavy
3 pressure on election officials and on the
4 EAC that cause contentious debate in the
5 states and nationally makes dispassionate
6 analysis both rare and more valuable, and
7 we recommend more of it. And the written
8 version of my testimony lays out seven
9 kinds of research that we encourage the
10 EAC to undertake, and I can summarize it
11 by saying we need to improve the data
12 collection. We need to collect it over

13 time. We need to collect it reliably and
14 provide analytical capacity to look at --
15 to make sure that the debate that goes on
16 over this issue refers to facts that can
17 be generally agreed on.

18 A final thought, a voting system
19 requiring voters to produce ID, again, may
20 prevent the ineligible from voting, but it
21 may also prevent some eligible voter from
22 casting a ballot. If the ID requirements
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1 block a few ineligible voters from the
2 polls at the cost of preventing an equal
3 or greater number of eligible voters who
4 cannot obtain or have left at home the
5 required forms of identification, the
6 integrity of the ballot may not have been
7 improved. The harm may be as great as the
8 benefit.

9 Ultimately, a normative
10 evaluation of whether a state should adopt

11 a stricter voter ID requirement, and what
12 form that requirement should take, will
13 weigh value judgments as well as available
14 factual evidence. We did our work on the
15 premise that increased understanding of
16 the facts relating to the imposition of
17 voter ID requirements, based on available
18 data and statistical analysis of that data
19 can help inform the policy process.

20 We hope that premise is
21 realistic, and we also hope that this
22 research has helped the Commissioners and
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1 the interested public to clarify their
2 thinking on this polarizing topic. On
3 behalf of the Eagleton Moritz research
4 team, we thank you for the opportunity to
5 contribute to the national debate. We
6 are, of course, open for questions.

7 CHAIR DAVIDSON: Thank you, very
8 much, to all of you. We all have

9 questions, and I think I want to make one
10 statement, that in your presentation you
11 mention it keeps eligible voters from
12 voting if they don't have an ID. I want
13 to make sure that everybody understands
14 they have the opportunity to vote
15 provisional because HAVA requires
16 everybody the opportunity to cast a
17 ballot. And I agree with you, it's up to
18 state law whether that would be counted.

19 So I just want to make sure
20 people understand they do have a right to
21 cast a ballot.

22 MR. O'NEILL: Yes, absolutely.

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1 CHAIR DAVIDSON: I wanted to
2 make sure that was understood. One of the
3 questions that I would like to ask first
4 of all is: You only use 2004 information.
5 And as we look forward in what we should
6 be doing in states, a lot of states were

7 brand new with the ID at the 2004
8 election. Wouldn't it have helped to
9 compare statistics of what their turnout
10 was prior to them having ID, like a 2000
11 election, presidential to presidential?
12 Wasn't that one of the things that would
13 have helped in this study?

14 MR. VERCELLOTTI: It would have.
15 One of the challenges in the research was
16 nailing down what exactly the requirements
17 are and were in the each of the 50 states
18 and the District of Columbia. Some of
19 these requirements pre HAVA have been on
20 the books for 20 or 30 years. And one of
21 the challenges we face was establishing a
22 date certain that all of these

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1 requirements took effect. Because I think
2 it it's a reasonable research assumption
3 that the newer the requirement, the more
4 drastic its impact on turnout. And that

5 was something that we didn't realize until
6 late in the game, and just ran out of time
7 to take a look at that.

8 One of our suggestions here is
9 that tracking this over time is absolutely
10 crucial to get a complete picture of the
11 effects of these requirements.

12 CHAIR DAVIDSON: In doing the
13 study, what was the impact of positive or
14 negative? That was very hard for me to
15 understand in your study. What was the
16 impact of positive or negative of those
17 factors on voter turnout in the same
18 state. Your reference to positive factors
19 there.

20 Well, I think that in your study,
21 if I can find it, you mention the maximum
22 and the minimum, that type of information.
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1 I couldn't understand in a state having a
2 state law, how you can have a maximum and

3 a minimum. Like for instance, I took New
4 Jersey -- not New Jersey, I can't think of
5 the state, but they are same day
6 registration. Basically, they have no
7 registration, but yet they ask for ID at
8 the polling place. It looked like you
9 were lumping them in with the area they
10 could sign an affidavit. Now, if they
11 didn't have that law in that state, if
12 they didn't have an ID, they would sign an
13 affidavit or a judge or poll worker could
14 vouch for that individual that knew that
15 they were a citizen and were eligible to
16 be able to vote. I guess I didn't
17 understand how you could put them into the
18 area of just asking for an affidavit when
19 most of the people showed an ID at the
20 polls.

21 MR. VERCELLOTTI: Well, in cases
22 like that, that's why we ran the analyses

1 both ways. Because another important
2 lesson from this research was the human
3 element of the voter identification
4 process in that at the polling place, an
5 election official could require or could
6 ask for a specific kind of identification
7 or could settle for something other than
8 that. And so we choose to look at it at
9 its strictest level. And then what was
10 the minimum that a voter had to provide to
11 vote on a regular ballot as opposed to a
12 provisional. In some states, they were
13 the same, but in a number of states, they
14 were not. For example, on the photo ID
15 states, some of the states dropped back to
16 a non-photo ID as the requirement and a
17 few dropped to a sworn affidavit. And
18 really from our read, and I'm
19 extrapolating from what our colleagues at
20 Moritz found, from our read of the
21 statute, it was really at the discretion

22 of the election official at the polling

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1 place.

2 What we have learned from the
3 qualitative research we have done,
4 particularly in the provisional ballot
5 part of the EAC contract, is that there is
6 an enormous amount of human element
7 involved in administering these laws and
8 an enormous amount of discretion. Trying
9 to capture that in five categories in a
10 statistical model is a real challenge, and
11 at some point, you have to make these
12 choices.

13 CHAIR DAVIDSON: So what you're
14 saying then, in future studies, it ought
15 to be broken down far deeper than what you
16 were able to do.

17 MR. VERCELLOTTI: I think in
18 future studies, there should be some
19 triangulation. There should be case

20 studies of some specific states where you
21 could capture the nuance of the
22 complexities of this process, involving 131

1 not just statistical analysis, but
2 in-depth interviews with election
3 officials, perhaps even follow-up surveys
4 of voters who did or didn't turn out, who
5 did or didn't cast regular ballots versus
6 provisional ballots, to really flesh out
7 what we couldn't capture by a strict
8 statistical analysis.

9 MR. O'NEILL: If I could
10 supplement that, the concept of the
11 maximum and minimum is difficult to get my
12 arms around, and I am sure it's difficult
13 to get your arms around.

14 The best thing I think you need
15 to focus on is that in the year we were
16 looking at, there was no state that had an
17 absolute requirement that you have to have

18 a photo ID in order to vote. Four of the
19 states had that on their books, but at
20 this time, none of them made that an
21 absolute requirement.

22 In this election we're looking
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1 at, by presenting some other form of ID or
2 by signing a ballot -- signing an
3 affidavit and still vote a regular ballot.
4 So if you understand that maximum and
5 minimum concept, that is the fact. And
6 the lack of any requirement for the photo
7 ID in the 2004 election is the reason we
8 could not be more dispositive on telling
9 you what photo ID will do to voter turn
10 out.

11 The second thing that I would
12 say to re-enforce Tim's latest comment
13 about the nuance, I remember speaking to a
14 state election official in Illinois about
15 the nuance issue. And he said to me, "We

16 have 110 election jurisdictions in
17 Illinois and I have reason to believe the
18 voter ID requirements are administered a
19 little bit differently in each one."
20 So when we categorized the state as having
21 a particular voter ID regime that
22 necessarily fails to capture the

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1 discretion that is in practice in the
2 hands of the officials at a particular
3 polling place.

4 CHAIR DAVIDSON: I have other
5 questions, but I want to turn to our
6 colleague. I also want to recognize our
7 counsel for additional questions.
8 Commissioner DeGregorio, I will turn it to
9 you for your questions.

10 COMMISSIONER DEGREGORIO: Thank
11 you. I realize -- I appreciate the work
12 that you have done, the recommendation you
13 have made. I know that Karen Lynn-Dyson,

14 our research director, we have received a
15 lot of reports in the last three, four
16 years, and many of them have begged for
17 more research. And many times, many
18 cases, it is the first time that the
19 Federal Government has embarked on
20 collecting data in that area of election
21 administration. It's certainly been
22 collected by others in private concerns,

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1 but I think that we find in many cases, as
2 in this one, there is also recommendations
3 for further research to collect further
4 data.

5 Dr. Vercellotti, you stated and
6 the report states that the correlation
7 between voter ID and turnout is not
8 statistically significant. Can you tell us
9 what that statistically significant means?

10 MR. VERCELLOTTI: In terms of
11 voter ID requirements, you can look at

12 them on a scale of increasing, let's say,
13 burden, for lack of a better term, on the
14 voter, from simply stating one's name up
15 through providing a photo ID.

16 In mathematical terms, that
17 would be treating it as one continuous
18 variable. What we found those is that
19 while there was a general trend for
20 average turnout to decline as you got
21 higher up that scale, it was not perfectly
22 linear. And so in looking at minimum
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1 requirements, the correlation between
2 those minimum requirements in turnout was
3 not statistically significant. It was not
4 a linear relationship.

5 COMMISSIONER DEGREGORIO: At the
6 same time, in your report to us, you
7 indicate that the non-photo ID
8 requirements show the most significant
9 correlation was reduced turnout.

10 Can you elaborate on that, why
11 non-photo ID would have that effect?

12 MR. VERCELLOTTI: Sure. I need
13 to choose my language carefully because,
14 as you know, correlation does not equal
15 causation. What we're identifying here
16 are relationships, and we want to be very
17 cautious about that.

18 Looking across all of the
19 models, if you look, and here we're
20 talking about the individual level data
21 for the entire sample of the current
22 population surveyed, white respondents,

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1 African-American, Hispanic, and
2 Asian-American. Consistently, there is a
3 negative association between living in a
4 state that required non-photo ID and
5 having said you turned out to vote.

6 In this sample, these were
7 individuals who identified themselves as

8 citizens and identified themselves as
9 registered voters. So these were clearly
10 individuals who had that right, should
11 they choose to exercise it. And we found
12 this relationship. I can only speculate
13 here that a non-photo ID was both a fall
14 back for a handful of the photo ID states
15 and a consistent requirement. And I can
16 give you this number by the turn of two
17 pages here.

18 Non-photo ID was a requirement
19 in 15 states, and it was the most frequent
20 requirement or second most after signing
21 one's name. So it may be simply it's the
22 most consistently required form of

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1 identification, and therefore, had the
2 most consistent effect on turnout.

3 Now, here is a challenge that we
4 face. We don't know where that effect
5 occurs or that relationship occurs on

6 Election Day or is it that they get to the
7 polling place without this form of
8 identification, and choose not to cast a
9 provisional ballot, for whatever reason.
10 We don't know that, from the current
11 population survey data.

12 It simply asks you, if you pass
13 the screening questions for the U.S.
14 citizen of the United States and that you
15 are registered to vote, it simply asks
16 whether, indeed, you voted on Election
17 Day, 2004. So that experience, is, again,
18 another area that's ripe for future
19 research to really get at the heart of the
20 relationship between ID and turnout.

21 COMMISSIONER DEGREGORIO: In the
22 follow-up on that, and we had a discussion

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1 earlier about the minimum versus maximum
2 that required photo ID, at the same time
3 you can vote by affidavit, if you didn't

4 have that ID. It's hard to make a call on
5 a cause and effect in reality was when you
6 went into the polling place and you didn't
7 have a photo ID, that you could still vote
8 by affidavit. It's very hard to make a
9 judgement call. That's what I think I
10 hear you're saying.

11 Let's talk about this current
12 population survey conducted by the Labor
13 Department. There are statistics that
14 trouble me because they are a lot
15 different than the statistics gathered by
16 the EAC. Example, this survey shows that
17 89 percent of self-reporting citizens said
18 that they voted in the 2004 election.
19 Now, we know, EAC knows for a fact, based
20 on the statistics provided to us in the
21 survey that we did to the states and
22 statistics provided to our organization,

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1 that that figure of the eligible

2 population in America is 61 percent.

3 That's a 27 percent difference between
4 self reporting and actual.

5 Can you really draw conclusions
6 from that? And I know that you have
7 studied this yourself. I'm trying to get
8 a grasp on that difference and how we
9 believe statistics, when they are so far
10 off from what the reality shows.

11 MR. VERCELLOTTI: There are a
12 couple of points to consider, one is the
13 denominator in the fraction. In the
14 current population survey, this is the
15 percentage of citizens who say they are
16 registered to vote who say they voted.
17 Other measures of voter turnout may be the
18 percentage of citizens of voting age
19 population. They may or may not be
20 registered to vote. That would bring the
21 turnout down. And so that could be a
22 distinction.

1 And the other is a practical
2 distinction that we wrestle with in survey
3 research all the time, that when you ask a
4 set of respondents whether or not they
5 voted -- well, let's back it up, whether
6 or not they are even registered to vote,
7 you are going to get some structured
8 reliability bias.

9 Then when you ask, have you
10 turned out to vote, you may get social
11 bias as well. It may be that they are
12 predisposed to be civically engaged and
13 you are getting a higher percentage of
14 voters who turned out.

15 We know from separate data
16 collection in the American National
17 Collections Study, which has done
18 validation studies where it has taken the
19 names and addresses of the respondents and
20 actually validated their turnout, that we
21 can see inflation of about 10 percentage

22 points, in some cases, comprehensive

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1 largest data set. And once that goes back
2 so far that it allows for comparisons,
3 that instead of focusing on the raw
4 percentage of the turnout, we take a look
5 at the relationships between the variables
6 of the data set because therein lies the
7 rub.

8 If you've got a data set of
9 individuals who may be inflating their
10 voter turnout for social desirability
11 reasons and you are seeing a relationship
12 between reduced turnout and some sort of
13 voter ID requirement, we may actually be
14 understating the magnitude of that
15 relationship.

16 It's an important contextual
17 question to consider when you look at
18 those turnout rates, because 89 percent is
19 vastly different from what we could see in

20 the press or an estimate of national
21 turnout in a national election.

22 MR. O'NEILL: If I could

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1 supplement that, Commissioner, if you were
2 to use only the CPS data, I think you
3 would not be exercising due diligence of
4 information, but we use two sets of data
5 as away to provide an independent check on
6 each of them. And I suggest that more of
7 that kind of work of bringing in
8 additional data sets to look at the
9 information is, in fact, like putting your
10 seat belt on when you drive.

11 CHAIR DAVIDSON: Commissioner
12 Hillman.

13 COMMISSIONER HILLMAN: Just a
14 quick follow-up to Commissioner
15 DeGregorio. That, hopefully, in due time,
16 when the EAC has more of its survey
17 results back from federal elections, then

18 there will be a more consistent set of
19 data over time from actual numbers that
20 are reported directly by the states with
21 respect to registration and turnout.

22 Over the years, the best we

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1 could do with the Census Bureau on other
2 data was use it for trends, not the real
3 raw numbers, but just use it for trends.
4 And I think the trends have been pretty
5 consistent with respect to the highest and
6 the lowest, and even the percentages, but
7 it's true that people will tend to say,
8 yes, I did something, whether they did or
9 not.

10 In the past three years, as the EAC
11 has undertaken its responsibilities, we
12 have had to jump on to a moving train.
13 At first, I was thinking about the way
14 people move everything in the airport
15 where you get everything on the belt, but

16 those things move generally. And you know
17 where you are going to end up when we get
18 on this moving belt. We don't know where
19 we're going to end up, because so much of
20 what we have been asked to do has not been
21 done before.

22 So we start to explore an issue,
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1 whether through our testing and
2 certification program design and
3 establishment or through the many research
4 and studies that we've done, research
5 projects and study that we've done. We
6 know we're going to uncover things we
7 couldn't have articulated when getting
8 into the study, but for me, that is the
9 beauty of research and study. Sometimes
10 when you take a specific issue and you
11 peel it back and you say bingo, that was
12 right on the mark, or other times you say,
13 as the Chair said in her opening remarks,

14 it starts to raise more questions. And I
15 think that is the only way that we're
16 going to be able to get to identify the
17 real dynamics in some of the elements
18 surrounding voting in the United States.

19 Sometimes the public officials
20 have needed more from the EAC in the past
21 three years than we could possibly have
22 delivered, and that is both sides of the
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1 discussion on voter ID, those who see it
2 as ballot integrity, those who see it as
3 ballot suppression, if you will, are
4 equally anxious to get cogent information
5 right away to solve this issue right away.
6 What I have found since joining the EAC,
7 people want the answer right away. They
8 want the fix right away, and let the fix
9 be permanent, let us not have to revisit
10 this.

11 We have got to figure out what

12 will inform the debate today, and what we
13 can continue to explore for the long run,
14 that we can't fix everything that we don't
15 like about elections in this country by
16 2008. Some things really will go beyond
17 2008.

18 Having said that, and I don't
19 know if my question is for Mr. O'Neill or
20 Mr. Vercellotti, that is the norm of this,
21 when you look at a research project like
22 this and you realize that what you're

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1 getting into requires more research, more
2 data study, more analysis, maybe even
3 needing data that's not yet available,
4 what is the norm around that, how do -- in
5 the world of researching and academics and
6 others, how do you frame that when you
7 know there is a huge constituency that
8 needs data today, but yet you know you
9 can't responsibly provide that data today.

10 And I think that there was a
11 statement, I think, you made, Mr. O'Neill,
12 about the need to assess the trade office.

13 MR. O'NEILL: Yes.

14 COMMISSIONER HILLMAN: How do
15 you do that to inform legislators, because
16 their constituents are beating the living
17 daylight out of them to get a resolution
18 to ballot access for ballot integrity.

19 MR. O'NEILL: Well, as you
20 phrased your question; what should we did
21 about global warming. Of course, there
22 are as many unanswered questions there as
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1 there are here. There is a difference
2 between the table you're sitting at and
3 the table we're sitting at. Those who are
4 charged with making policy leadership have
5 to lead, in the absence of perfect
6 information. Sometimes in the absence of
7 good information, sometimes in the absence

8 of information.

9 Those sitting where we are in
10 the position of looking for the
11 information that we hope can help inform
12 what you are up to, and I would say that
13 from our side of the table, the greatest
14 contribution the EAC could make on this
15 issue now is to specify the questions, to
16 make wise decisions on striking this
17 balance between ballot integrity and
18 ballot access, and then make sure that the
19 information you need to answer those
20 questions is budgeted for, and collected,
21 and analyzed, in an appropriate period of
22 time.

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1 The policy process can be self
2 correcting. Make a decision today, make a
3 different decision five years from today.
4 But without the information, the decision
5 five years from today won't be any better

6 than the one you make today.

7 COMMISSIONER HILLMAN: Did you
8 have anything to add?

9 MR. VERCELLOTTI: I think you
10 used an important term in framing your
11 question, and that was responsible, doing
12 something responsible.

13 In academia where we still
14 wrestle with the election of 1968.

15 COMMISSIONER HILLMAN: Those,
16 aren't you lucky.

17 MR. VERCELLOTTI: It's lucky.
18 Our students may have another term for it.
19 But we do know though that it is important
20 to stop and reflect on what we know and
21 say this is the best we can describe right
22 now, given the limitations. It's not the
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1 complete picture, it's not the definitive
2 picture. And that's hard to sell in the
3 world of applied policy, no question about

4 it.

5 I will point out though,
6 watching the action in the states, we'll
7 know more fairly soon as these photo ID
8 requirements kick in. And we have
9 naturally occurring pre and post treatment
10 quasi experimental designs where we can
11 look, provided the circumstances of the
12 elections are similar. In other words,
13 you are comparing two mid term elections
14 or two presidential elections. We may not
15 have the answers today, but just based on
16 where public policy seems to be going in
17 the states, we're going to have more data,
18 naturally occurring data, just looking at
19 turnout rates before long.

20 That's shallow consolation, but
21 in the academic world, in its the point we
22 reach sometimes, at best. This is our

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1 best estimate at this point in time.

2 COMMISSIONER HILLMAN: The EAC
3 has never been resourced to be able to do
4 rapid response to things. We just don't
5 have the money or the staff to be able to
6 take a huge, important set of data and to
7 be able to do qualitative assessment, due
8 diligence, if you will, to determine how
9 it informs the work that the EAC is doing,
10 but we get there the best we can.

11 MR. VERCELLOTTI: Now, it would
12 not take into account individual county
13 level factors, a tropical storm coming
14 ashore in the coastal Carolinas or
15 outbreak of flooding in western
16 Pennsylvania, so, therefore, certain
17 counties had to curtail their hours or
18 extend their hours.

19 It's really a broader brush in
20 terms of whether a state had a competitive
21 race, whether a state cut off registration
22 a certain numbers of days before the

1 election or had Election Day registration,
2 for example. We also took into account
3 contextual factors such as Oregon's mail
4 in, and we took into states which have no
5 registration. So there were state level
6 contextual factors, but anything below
7 that, we didn't have the data to capture.

8 MS. HODGKINS: So I assume that
9 you assigned your environmental factors as
10 well as the level of voter ID impacted its
11 turn out what the average or mean turnout
12 is?

13 MR. VERCELLOTTI: Yes, in the
14 context, was this a battleground state or
15 not. We simply coded each county with a
16 zero or one. One, if it was in a
17 battleground state, zero, if it was not.
18 The same with the voter ID requirements.
19 We considered all five types of
20 requirements separately. So a county that

21 required the respondent to state his or
22 her name got a one for stating one's name,
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1 zero for all the other measures of voter
2 ID. And so what we were doing in our
3 analyses was comparing each of the
4 requirements against the most basic,
5 simply giving your name at the polling
6 place. So when we say turnout varied, it
7 was in this context, respondents in states
8 where you had to provide voter ID were 2.9
9 percent less likely to say they voted than
10 in a state where you simply had to give
11 your name. So giving your name was the
12 standard against which we compared
13 everything else.

14 MR. O'NEILL: Could I ask for a
15 clarification, Julie? I think you said we
16 were comparing 2000, 2004. I think the
17 point that Tim just made is what we were,
18 in fact, comparing was turnout in states

19 with particular voter ID regimes.

20 MR. VERCELLOTTI: This was a
21 snapshot of November, 2004. I didn't
22 intend to say that. You were looking at

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1 different states in the 2004 context, but
2 the question was whether or not you looked
3 at an individual state in 2004.

4 No, we did not look at it. We
5 looked, simply looked at them relative to
6 2004.

7 MS. HODGKINS: One last
8 question. I didn't see it in the report.
9 I may have missed it. How did the
10 relative numbers, in terms of the
11 relationship between turnout and ID,
12 compare to say the number between the
13 turnout in a battleground state?
14 How did those factors compare against each
15 other?

16 MR. VERCELLOTTI: Well, I can

17 tell you. I have lots of tables here
18 relative to the effects. I will say this,
19 in terms of the effects of voter ID,
20 sometimes they were much smaller than a
21 battleground state. It was on the
22 margins. I don't want to waste our time

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1 fishing through our papers here, but I can
2 certainly find that information and get it
3 to you.

4 MS. HODGKINS: Thank you, Madam
5 Chair.

6 CHAIR DAVIDSON: You can see we
7 probably could go on another hour and ask
8 questions. We have so many questions.
9 Obviously, many questions have been raised
10 today that we need to consider, and I
11 think the next step that the EAC and how
12 we move forward has to be determined. And
13 I'm going to request our executive
14 director, within 30 days, to make a

15 recommendation to the Commission on how we
16 determine how to move forward and what the
17 final outcome of this initial research
18 will be, and we will notify everybody. It
19 will be on our web site. And, obviously,
20 you will be the first to know what we do.

21 I think we still have some
22 questions for the staff. And your

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1 suggestions, what you are suggesting we do
2 for the future. We have got to make those
3 decisions and look at our budget
4 restraints, our personnel restraints.
5 Right now, it has been a continuing
6 resolution that makes it difficult to make
7 decisions, but I want to thank both of you
8 for coming and enlightening us in your
9 presentation today and answering our
10 questions.

11 Obviously, we do take this very
12 seriously. It's a responsibility and the

13 future of what we can gather information
14 on, how we go about it, and forming the
15 questions to the public or on the
16 research. So there's a lot of things that
17 we need to think about, but I do want to
18 thank you very much.

19 And we will take a five-minute
20 break at that time so we can move into the
21 next panel because, obviously, it's a very
22 important panel also. We want to give it
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1 due time. Thank you so much.

2 (Short Recess.)

3 CHAIR DAVIDSON: HAVA instructs
4 the EAC to audit use of the HAVA funds.
5 The EAC has posted information, obviously,
6 about the reporting requirements as well
7 as information about the proper use of
8 HAVA funds, and I encourage everyone to
9 visit our web site at www.eac.gov or to
10 call Edgar Cortez, toll free,

11 866-747-1471.

12 Now, we will hear from our EAC
13 inspector general, and also we will have
14 testimony from Dan Glotzer and Marci
15 Andino. I almost forgot. I call her
16 Marci so often, I forgot to say her last
17 name.

18 Curtis has been with us since
19 August of 2006, and he was appointed the
20 inspector general for the EAC. Prior to
21 that, Mr. Crider served as the EAC deputy
22 inspector general. Before coming to the
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1 EAC, Mr. Crider worked for the Department
2 of Interior for 29 years, conducting
3 information audits on the Department of
4 Bureau and Offices.

5 And I will go ahead down all of
6 these. Then we will come back to you for
7 your testimony. Roger LaRouche was deputy
8 inspector general or is for EAC. He came

9 to us in 2005 and served as the inspector
10 general prior to coming the EAC. Before
11 coming to the EAC, Mr. LaRouche worked
12 with the Department of Interior also as
13 the inspector general in the inspector
14 general's office, serving as the regional
15 audit supervisor.

16 Dan Glotzer is here from the
17 Texas Secretary of State's Office. Dan
18 began his work with the State of Texas
19 Department of Criminal Justice in 1997.
20 He left the TDCJ to work in the criminal
21 justice division of the governor's office
22 in 1999 where he managed grants, ranging
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1 from law enforcement training and criminal
2 prosecution, to drug treatment.

3 Marci Andino is executive
4 director of the State Commission of South
5 Carolina. Marci has been in that
6 responsibility overseeing, conducting

7 primary and special elections in South
8 Carolina to insure elections are conducted
9 in a fair and impartial manner. Marci
10 also serves on our EAC Standards Board as
11 one of our members. And I visited last
12 year South Carolina's primary election,
13 which ran very smoothly, and I appreciated
14 everything that they did in hosting me
15 there. And last week I was there for
16 their conference, and I enjoyed my time
17 there, being able to get remarks.

18 I appreciate everybody being
19 here. This is important, and I do
20 apologize that we're running about 40
21 minutes behind, so we will start out with
22 Mr. Crider.

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1 MR. CRIDER: My name is Curtis
2 Crider, Inspector General, U.S. Election
3 Assistance Commission.

4 CHAIR DAVIDSON: Pull the mic

5 closer. I am learning that I am the one
6 that is supposed to be telling you that.

7 MR. CRIDER: We appreciate the
8 opportunity to talk to you today, Madam
9 Chair, concerning the audit program we
10 have established with the EAC. I'm going
11 to give a very brief description of the
12 operations of the office of inspector
13 general.

14 Roger's going to talk about our
15 audit programs, and Dan and Marci are
16 going to talk about their perception of
17 the audit program, because they have been
18 audited by the EAC last summer and can
19 give their perspective and their
20 observation about the audit program and
21 hopefully get good ideas or suggestions on
22 how it can work better, make EAC

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1 operations work better, as well as our own
2 audit programs.

3 We appreciate the opportunity.

4 We also would like to express our
5 appreciation to the Chair, Commissioners,
6 and to the Executive Director, for the
7 outstanding report we have received in the
8 last year. Your support and
9 recommendations and your counsel has been
10 very valuable to us, and we appreciate
11 that. We hope in your rare and close
12 relationship, we understand we're an
13 independent office within the U.S.
14 Election Assistance Commission as well as
15 to audit programs in the states. Like I
16 said, we're very pleased with what we have
17 received.

18 The mission of the Office of
19 Inspector General is to conduct audits and
20 investigations of EAC operations. We work
21 with our clients very closely in trying to
22 establish good communication, good working
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1 relationship with the idea we're
2 independent. We're required to comply
3 with the rules and regulations, and we're
4 very pleased that we're able to be here
5 today.

6 Our work is designed to enhance
7 the economy and efficiency of the EAC
8 operations. We're also supposed have
9 investigative ability. I have Help
10 America Vote 2000 as well.

11 When our office was established,
12 we had access to all records, documents,
13 proceedings, reports and everything
14 related to the EAC operation. We have the
15 ability to conduct investigations. We
16 have authority to request assistance from
17 other federal agencies, state agencies,
18 general accounting office, and we have
19 authority to issue subpoenas. We have
20 authority to take oath related to the EAC
21 operation which we feel is necessary to
22 support our operations, direct and prompt

1 access to the Chairman, and we're required
2 to keep the chairperson informed as to any
3 issues or problems we identify during the
4 course of our reviews.

5 Duties and responsibility of the
6 IG itself is to develop the audit program,
7 investigative program. We review proposed
8 laws and regulations, and provide comments
9 where they affect the EAC operations. We
10 keep the chairman and Congress fully
11 informed of what is going on through our
12 reports.

13 We issue a semi-annual report to
14 congress. We issued our first report on
15 September 30, 2006. We issue that every
16 six months, keep Congress informed. We
17 provide copies of all reports to the EAC
18 management and to Congress.

19 We are required to comply with
20 Government auditing standards that is in

21 the law. We're also in the process of
22 getting non-federal officers to conduct

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1 audits. We're required to monitor
2 activity to ensure their work is up to
3 standards. That is a pretty large work
4 order because they are currently
5 conducting two audits. We're required to
6 review the work, make sure it was done
7 correctly, review audit program plans,
8 work papers, and make sure it was done in
9 accordance with contract terms, as well as
10 in accordance with Government auditing
11 standards.

12 We're required to coordinate
13 with the general accounting office in
14 conducting reviews that they are
15 conducting to prevent duplication of
16 effort. And we also supervise and review
17 any investigative activity currently
18 ongoing in the EAC.

19 Some of our procedures and
20 services include financial audit, grants
21 information system audits, evaluations, as
22 well as investigations. We view that our
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1 clients are the Commissioners, executives
2 of the EAC, Congress, Office of Management
3 & Budget, Government Accountability
4 Office, state government, and the public.
5 We put all of our reports up on the web
6 unless there is something that needs to be
7 redacted.

8 We believe in transparency.
9 Currently, I am the only full-time
10 employee in the Office of Inspector
11 General. Mr. LaRouche and Mr. Asacks
12 (sic) had been on loan to us for about a
13 year-and-a-half. We been very, very
14 fortunate to have that resource available
15 to us. They have done an outstanding job,
16 and I compliment both of them for the work

17 they have done. They have been done
18 outstanding research, helped us
19 established the audit program here in the
20 EAC, and their counsel and guidance has
21 been absolutely wonderful.

22 We also have a memorandum of

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1 understanding with the General Services
2 Administrative Office of Inspector General
3 to conduct investigations. The guiding
4 principles of the office, to produce high
5 quality reports, insure they as accurate,
6 timely, relevant, and responsive to the
7 needs of management, which includes the
8 Chair, which includes the Chair as well at
9 the other Commissioners. We feel our
10 products need to be on target, need to be
11 on time, need to be responsive to the
12 needs of the Commission.

13 We want to ensure fairness,
14 integrity, independence, objectivity,

15 proficiency, and due care in performing
16 our work, promote teamwork during an
17 audit. Any question that you have, feel
18 free to call us, contact us.

19 Our program, we have established
20 audit payments sent to the states. That
21 is a very integral part of our work. One
22 of the first things I did was to work with
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1 Roger to get that program started. The
2 objective was to comply with HAVA
3 requirements and sustain the states' level
4 of expenditure for elections.

5 To date, we have completed
6 audits of California, New Jersey, Georgia,
7 Texas, South Carolina, Pennsylvania and
8 Illinois. We have completed seven audits
9 so far. We currently have audits ongoing
10 of Ohio, Maryland, Indiana, Virginia,
11 Kentucky and New Mexico. For the remainder
12 2007, we plan on starting audits of

13 Missouri, Wyoming, Washington, Nevada,
14 Oregon, Iowa, and Alabama. It's a lot of
15 work, but we think we can probably
16 accomplish it.

17 EAC audit programs. One of the
18 questions is how is a state selected for
19 review. What we're doing is primary
20 emphasis on the amount of money that the
21 state has expended, the results of single
22 audits, and results of any reviews by the
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1 state or other auditors, and special
2 requests. As I pointed out the primary
3 reason for scheduling an audit of a state
4 has been the amount of money expended by
5 the state. We believe it is going to take
6 eight to ten years for us to complete our
7 audit program for the states. We
8 anticipate doing eight audits next year.
9 One issue will be trying to work an audit
10 program around the primaries and other

11 issues arising in the states. We
12 recognize this is not the only thing going
13 on. We need to coordinate with states in
14 terms of trying to get those reviews
15 ongoing, like I said, taking into account
16 primaries in some states. Some states
17 will be need to be re-audited. For
18 example, California. California, we
19 audited 15 million dollars. They received
20 over 300 million dollars. So there is a
21 very large amount of money that was still
22 out there that had not been audited. We
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1 will end up going back to some states. Re
2 don't know what the schedule that will be
3 because right now we're operating on 2005
4 data. We will be putting in our audit
5 plan up on the web probably in October,
6 give the states a heads up, in terms of
7 which states will be on the schedule for
8 2008 with the understanding there may be

9 some changes based on special requirements
10 or special needs.

11 As I stated, the audit plan is
12 very aggressive, but completion of that
13 audit plan will depend upon how many
14 resources we have available. Unforeseen
15 circumstances, such as we get special
16 requests from Congress or the EAC, that
17 may alter those priorities, and we will
18 take those into consideration as the year
19 goes along.

20 That concludes my presentation.
21 If you have any questions for me, I would
22 be glad to answer them. If not, we will
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1 go straight to Roger.

2 CHAIR DAVIDSON: I think we will
3 continue on go through the whole program
4 and work back, let the Commissioners ask
5 question.

6 Roger LaRouche, it's all yours.

7 MR. LAROCHE: Thank you. I am
8 going to give you a very brief overview of
9 how we go about doing the audits, as far
10 as before we leave the office. Here in
11 Washington, before we visit a state, we
12 will contact them, send them a letter, and
13 the letter outlines when we're going to
14 start, gives them an idea of the
15 activities we're going to cover.

16 While we're here in Washington,
17 we review the financial reports that the
18 states submit called standard form 269.
19 Those forms tell us how much was spent,
20 and some of the reports actually list of
21 expenditures the state made using the 101
22 funds, 102, and 251. We also get general
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1 knowledge on how the state operates its
2 program, and look for key information that
3 impacts our audit, such as, does the state
4 give grants to the counties. And if not,

5 we'll have to factor that into our audit.

6 One of the most important things
7 we do is we do prior audit reports. Those
8 single audits are audits that the state is
9 required to have conformed to cover all
10 their federal systems. We look at that to
11 see what kind of findings they had and
12 also to see if we can limit the scope of
13 our work physically. State auditors are
14 looking for controls, so we can rely on
15 their work, for example, to limit our work
16 on doing controls, other information
17 technology systems controls over
18 disbursements.

19 We also take a look at the web
20 site. It gives us plenty of information.
21 We can get copies of logs, download
22 regulations. Sometimes you can get

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1 appropriation acts to. We have got all
2 the information before we leave.

3 Once we get to the state, and
4 this is very briefly what we look at. We
5 try to answer certain questions. In
6 looking at expenditures, we want to know,
7 first of all, are there separate accounts.
8 We keep track of the 101 money, 102 money,
9 and the 250, 251 funds, do the amounts
10 reported on the 269s agree with the
11 accounting records, are salaries
12 adequately supported, are indirect costs
13 properly charge, are purchases
14 competitively made, is equipment
15 adequately safeguarded and tracked. If a
16 state granted funds to its counties, the
17 same questions are answered for the county
18 activities,

19 Procurement, obviously, is a key
20 because of the amount of funds spent for
21 new voting systems and for the technology
22 systems and voter registration systems.

1 What we're looking for are barriers to
2 competition. More importantly, we're
3 looking to see that the purchases were
4 made competitively, and if not, were they
5 adequately justified as a sole source.
6 And then if the state granted funds to a
7 county, which some have done, then we
8 basically go through that same exercise
9 with certain counties.

10 Now, we're not equipped to go to
11 every county in a state so we will scan
12 the counties, pick out the ones that are
13 large. We will pick out ones that we can
14 get to quickly, and we will also try to
15 get a range of counties, some large, some
16 intermediate, some small. And we will go
17 through the same exercise at the county
18 level that we went through at the state
19 level.

20 In addition to looking at
21 expenditures, HAVA presents conditions

22 particularly for receipt of the

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1 requirements payments, and so what do, we
2 look for is there an election fund, have
3 all payments HAVA payments been deposited
4 into the election fund, has the state
5 matching requirements been properly
6 computed, has interest been earned and
7 properly recorded, is use of the fund
8 restricted to 251-related activities.,

9 Another requirement is one that
10 the state maintains a level of effort
11 consistent with what it spent to make sure
12 that whatever amount the state was
13 spending on activities related to Section
14 251, are they still funding those
15 activities with state money subsequent to
16 passage of HAVA. So we look at that.

17 How do we deliver information.
18 While we're on the site, if we have a
19 finding, we think we found something

20 that's a problem, we will actually write
21 up what we call a notification of findings
22 and recommendations. We will identify the
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1 condition in our recommendations, present
2 that to the state officials, and ask to
3 give us a written reply while we're still
4 there. In a way, we hope to get all the
5 information to make a final determination.
6 Before we leave the site, we sit down with
7 state officials where we go over
8 everything that we believe is a reportable
9 issue.

10 After we leave the site, we
11 issue a written, non-public draft report
12 to the head of the state election
13 organization, asking for their written
14 comments in 30 days. After we get those
15 comments, we incorporate them into a final
16 audit report, which is a public document
17 that we issue to the Executive Director of

18 the EAC. And then EAC is responsible for
19 resolving any open issues in that audit
20 report.

21 As Curtis mentioned, we have
22 completed audits -- my count is seven

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1 audits have been completed. Ohio is one
2 where we finished our draft, but we
3 haven't issued a final report.

4 What kind of things are we
5 finding? I will quickly go through a list
6 that I have here. Non-competitive,
7 unsupported salaries, meaning if somebody
8 is charging 50 percent of their salary to
9 EAC-funded activity, we expect to see some
10 document that supports the 50 percent, in
11 some cases we're not finding that. In
12 other cases, employees are a hundred
13 percent working on HAVA. We don't need to
14 have that detail level, but it requires a
15 certification by their supervisor that

16 they are, in fact, working on HAVA. Once
17 in a while, we will come across something
18 we think is outside the scope of what HAVA
19 is supposed to be going. Off the top of
20 my head, since I didn't find much of
21 that, I can't think of an example.

22 What happens quite a bit is

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1 incomplete records of equipment, basically
2 talking about the voting machines. If the
3 machines are owned by the county, then the
4 county's supposed to have records that
5 meet federal criteria. And there is like
6 eight things they have to do; cost,
7 location, condition, how much money was
8 spent, things of that nature. We're
9 finding that those records are incomplete.

10 Undocumented maintenance
11 records, this is an area that is not
12 clear, in terms of record keeping and what
13 actually is included in the maintenance

14 effort activity. So when auditors go to a
15 state, then if we're not able to have a
16 number presented by the state that we're
17 able to verify, that is an area that's
18 coming up more recently than previously.
19 One of the reasons is we're taking a
20 closer look at them.

21 The requirement on 251 is a five
22 percent match. A million dollars matches
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1 five percent, well, that's not right. The
2 requirement is that the five percent be
3 based on the total of both the
4 requirements payment and the state's
5 activity. So in other words, the amount
6 of the requirements payment only computes
7 to 95 percent of the total that has to be
8 applied, so that's confusing. Some states
9 are under matching by only taking five
10 percent of their requirements payment as
11 opposed to the total.

12 And the last thing I have here
13 is what I call weak cash management of the
14 funds of counties. By that, I mean a
15 situation would be counties are receiving
16 funds way in advance of when they are
17 disbursing the monies, so they may be
18 sitting on those monies for six months to
19 a year.

20 So what's the impact of that.
21 The impact is states took it out of their
22 election fund. The other impact is if the
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1 county has it, they should be putting in
2 an interest-bearing account so they are
3 recovering interest. We're finding some
4 problems in those areas.

5 And lastly, I will just mention
6 some dollar impacts, what does all this
7 mean in terms of money. Well, those of
8 you who have done audits, the audit
9 quantifies the finding, associates the

10 value and those costs, and those
11 activities are referred to the EAC for
12 making a final determination of whether or
13 not the auditor's issue is one that they
14 agree with.

15 California may be going through
16 some additional dialogue. That is the
17 only audit report where there has been
18 what we have called a final determination
19 or a determination by the agency. The
20 others, we're still awaiting feedback from
21 the EAC on how the audit issues will be
22 resolved.

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1 So that concludes my testimony.
2 If you have any questions, I will has been
3 happy to answer them.

4 CHAIR DAVIDSON: Thank you, very
5 much. Now we get to hear the perspective
6 of the state, Dan Glotzer. We will let
7 you start.

8 MR. GLOTZER: Good afternoon.

9 My name is Dan Glotzer. I am the Texas
10 Help America Vote Act Grant Manager. I
11 will give you a high level overview of
12 what we went through, the basic process
13 and observations that I have, and some
14 tips. Most of my advice would probably go
15 to the states, but it's information which
16 might be helpful for you to convey to the
17 states.

18 That all being said, there is a
19 couple themes that I will reiterate, and
20 that is preparation and coordination. The
21 process starts with communication. We
22 were first contacted by the Inspector

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1 General's Office in April of '06. We
2 negotiated a reasonable time for them to
3 come and visit with us. We received our
4 official engagement letter in May.
5 They came about a month later. After

6 that, we received a draft report in
7 September, I believe it was, and we sent a
8 response to the draft report to -- I guess
9 it went to the Inspector General's Office
10 in October.

11 Essentially, the engagement
12 letter outlines everything that they are
13 going to be looking at, the types of
14 things the state's going to need to
15 provide which is, of course, very helpful
16 for a number of reasons which I will talk
17 about here in a few minutes. One of the
18 things we did to prepare was to identify,
19 based on the engagement letter, who needs
20 to be involved. Some agencies will say we
21 have a single point of contact and any
22 questions that the audit may have will go
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1 through that person, and then they will
2 farm it out to the appropriate staff. My
3 preference, and I think this is really

4 what we did when the Inspector General
5 came to Texas, is identify the staff
6 that's going to need to answer questions.
7 For example, if it's a purchasing
8 question, if it's a contract procurement
9 issue, introduce them to the head
10 purchaser where they are located.
11 Another thing we did is tried to
12 prepare as much documentation as possible.
13 I think providing more documentation is
14 better than less. It's best to be as open
15 as possible. What we did is collected
16 information. We bound it. There is
17 always going to be additional documents
18 that they are going to want to see when
19 they start peeling the onion. It's best
20 to do as much prep work as you can so the
21 audit can go as quickly and efficiently as
22 possible.

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1 One of the other things that is

2 important when issues come up, they do
3 know who to talk to so they don't go down
4 the wrong rabbit hole. You will have to
5 untangle that web. It wastes time for
6 both the state staff as well as Inspector
7 General's staff.

8 The on-site review. Some of the
9 basic things, the first thing we did is
10 find out what they need. We secured a
11 room for them, Internet access, telephone,
12 fax machine. Try to give them everything
13 they are going to need. We introduced
14 them to all the appropriate staff, exactly
15 who they need to talk to about various
16 issues. And one of the things that Roger
17 and his team were very helpful on, they
18 kept us in the loop consistently and in a
19 timely fashion. In other words, when
20 there was an issue, they would bring it to
21 our attention and give us a chance to
22 resolve it. Ninety-five percent can be

1 resolved without taking it to the next
2 level of a notice of finding. That was
3 actually very helpful because it helped us
4 correct some things we are were doing
5 inefficiently, or in some cases,
6 incorrectly.

7 The other thing that we did we
8 do in Texas, by state law, the counties
9 have to purchase the voting systems. And
10 so Roger and his team wanted to go visit
11 some of these counties. So we picked four
12 counties, two large ones, one immediate,
13 and one small one. I think we gave them
14 about two weeks notice. I think that was
15 adequate time, but the more notice, the
16 better. The same principles apply, give
17 them as much prep information that they
18 are going to need so when we go out there
19 with the IG staff or audit team, we're
20 able to go through the review as quickly
21 as possible and alleviate concerns that

22 they know what they are being audited for,
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1 because they get a little bit nervous when
2 the Federal Government's coming in to look
3 at their program.

4 So that is a big issue,
5 especially in Texas. We have 254
6 counties, but we have an audit program
7 within the state where we're trying to
8 visit as many counties as we can, and we
9 will do desk reviews of the others.

10 This program will probably last a few
11 years, so that audit program is in the
12 developing stages.

13 We have visited some counties.
14 The audit team did look at our policies
15 and procedures. That's another thing that
16 I would recommend to the states, that they
17 have good policies and procedures that
18 documents everything they do, why they do
19 it, and steps they take to do it. I think

20 that was very helpful for the audit team
21 to look at because it gives them a road
22 map of what we do in the grant program.

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1 In our draft report, there were
2 a couple of findings. There always are,
3 and that's okay. One of them, as Roger
4 mentioned, was indirect costs. We
5 miscalculated our indirect costs, which we
6 have since corrected. We have
7 recalculated, adjusted our books, and our
8 hope is that there is no further action
9 that is needed. That goes back to
10 identifying issues, correcting them.
11 Problems are going to come up, but they
12 are always correctable, usually. So that's
13 one of the issues, and we're still
14 awaiting the response on that.

15 The other issue is program
16 income, which is far more complicated. In
17 Texas, the counties run elections but we

18 also have political subdivisions that run
19 their own elections. Even before HAVA,
20 those local political subdivisions would
21 contract in some cases with counties to
22 help run the election or lease equipment,
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1 or whatever the need might be. So we have
2 a series of laws that deal with,
3 basically, an election service contract
4 that tells the counties how to account for
5 the money, how they can spend it, what
6 they can charge, and that's always been in
7 place. But when HAVA came along, that
8 exasperating things because what the state
9 did is they mimicked requirements of HAVA
10 in state law so we would have uniform
11 elections. It didn't makes a difference
12 if it was a school board or city election,
13 the same requirements would apply. And
14 what this has done is created what's
15 called program income. The fees they

16 generate, particularly if it is
17 HAVA-funded equipment, is program income.

18 Well, one of the things that we
19 have asked or responded to our draft
20 report is to allow counties to offset that
21 income earned, the calculation of that
22 income earned with expenses to operate and
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1 maintain this equipment. Obviously, the
2 rent money to buy the equipment was
3 helpful in securing the equipment, but
4 there is, obviously, ongoing costs that go
5 into maintaining that equipment that will
6 go on for as long as they have the
7 equipment. So things like security,
8 housing equipment, climate control issues,
9 there is a whole slew of expenses you
10 wouldn't dream of until you go to the
11 county and see all these costs they are
12 having to incur.

13 So the theory being is that the

14 net result is that they have zero program
15 income, it would be negative, but we
16 report zero program income. We're
17 awaiting a response on that. We still
18 have to advise the counties on how to
19 account for it, and how they should report
20 it to us. So we still have not done that,
21 and we're still pending the response to
22 the draft report.

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1 Some of the tips that I would
2 give the counties or states that will be
3 audited, again, preparation of the
4 material. That's a big one. The other
5 thing I would do is have a staff member
6 who is familiar with HAVA but is also
7 familiar with accounting/auditing. I
8 basically parked him in that room with
9 Roger and his team so if questions did
10 come up, basically, the accountant would
11 know where to point them. So that was

12 very, very helpful, and I would recommend
13 if states can donate someone to that
14 purpose, to guide them through the
15 process, I think that proved to be very
16 helpful.

17 Also, I would recommend that for
18 the Secretaries of States Office, like
19 most election offices throughout the
20 country, have never had grant funding
21 before. We're small agency but there is a
22 lot of controls that have to be put in
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1 place to basically manage these funds.
2 We, essentially, had to build our grant
3 program while we're trying to implement
4 this enormous mandate. In my view, it was
5 actually helpful for the Inspector
6 General's Office to come down because we
7 eventually had to do it on the fly while
8 we're trying to get 254 counties to comply
9 as well as build a statewide voter

10 registration database.

11 And lastly, in the case of our
12 audit, I think they were in Texas for
13 about seven weeks. It flew by. It was a
14 very quick seven weeks, but that's going
15 to be there home for a while so it's
16 helpful to give them as much information
17 about the town restaurants, things like
18 that, make them feel as home as possible.

19 That's the conclusion of my
20 testimony. If you have any questions,
21 I'll be happy to answer them after Marci's
22 finished.

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1 CHAIR DAVIDSON: Thank you.
2 Lastly, not least is Marci Andino. Marci,
3 usually, ladies are first, and I apologize
4 for making you last but we're anxious to
5 hear what you have to say.

6 MS. ANDINO: Thank you. In
7 South Carolina, the State Election

8 Commission is the agency that was
9 responsible for implementing HAVA. And
10 we're an independent state agency with 18
11 employees, five commissioners, so we're
12 not affiliated with the Secretary of
13 State's Office or Attorney General or any
14 other state agency that may have
15 experience in administering federal grant
16 programs.

17 This was our first experience
18 with federal funds. Some would say they
19 hope it's the last. We asked other
20 agencies that routinely work with federal
21 grants for assistance, and basically
22 department of motor vehicles, we contacted
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1 them. We talked to our state treasurer's
2 or control controller general's office.
3 And basically everyone just took a look at
4 HAVA and said, thanks but no thanks, and
5 we could not get any assistance to

6 mention.

7 So we were on our own pretty
8 much developing this program as it went
9 along. So it was a huge learning curve
10 involved. We made a decision early on
11 that if we didn't do anything right, we
12 were going to make sure that we followed
13 our state plan lowest will I so at least
14 we won't get in trouble for trying
15 something that we weren't supposed to. We
16 went through the single state audit before
17 the federal audit. That was conducted by
18 our state auditor's office. It began in
19 December of 2005. They were on-site for
20 about two months. And they had us
21 complete a questionnaire, as well as
22 provide them copies of financial records

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1 and related data. They also asked for our
2 commission meeting minutes, which is
3 pretty standard for the state auditors to

4 do.

5 The state auditors were very
6 knowledgeable about conducting audits, and
7 accounting, and even federal grants.
8 They were completely unfamiliar with HAVA,
9 and our staff had to spend a lot of time
10 educating them and saying, well, no, that
11 might be how it works on some state or
12 federal grants, but this one's a little
13 different. So there was a good bit of
14 time involved in that.

15 Some of the findings that the
16 state auditors identified were, first of
17 all, the matching requirement like Roger
18 said we were one of the states that did
19 not calculate it correctly, so therefore,
20 we loss some interest. We also overlooked
21 placing six or eight of our voting
22 machines that the state agency owns on the
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1 state inventory. We had an inventory

2 maintained by our IT department, but not
3 our agency, so that was something that was
4 quickly remedied.

5 The federal audit, of course,
6 was conducted by auditors assigned by the
7 Inspector General of the EAC, and it began
8 in August of 2006 and included on-site
9 visits to both our office as well as about
10 six counties. And the county offices were
11 visited because we had purchased the
12 statewide voting system, and the system is
13 now owned by the individual counties. So
14 they wanted to make sure that the counties
15 were following federal asset management
16 guidelines. The information that was
17 requested by the federal officers were a
18 lot of the same information requested by
19 the state auditor. They wanted findings
20 from the state audit, and more policies
21 and procedures, also an organizational
22 chart of the agency that also listed, I

1 believe, salaries, a copy of the
2 inventory. And because we had already
3 gone through the state audit, it only took
4 about two weeks for them to complete their
5 work.

6 There findings, we did not
7 obtain approval to purchase a bus. We
8 have a bus we use for voter education and
9 outreach. When we did our contract for
10 voter education and outreach, we didn't
11 have, store a bus. It was just part of
12 the proposal. Like I said, we did not
13 know of the federal requirement until the
14 auditor came through. Counties did not
15 keep sufficient records of the equipment.
16 We posted a story on our election net or
17 Internet site, and asked counties to
18 certify to us that they were in
19 compliance. Some of them still have not
20 certified. Last week, at our state

21 conference, I told them that the federal
22 officer would be out to see them if we

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1 didn't get those certificate. I am sure
2 there will be some on our desk when I get
3 back.

4 Maintenance was also an issue
5 for us in South Carolina, actually putting
6 a dollar amount to it. We're not using
7 any of the federal monies to augment
8 anything that we had been doing prior to
9 2000, but we still had difficulty, and we
10 have since gone back and calculated that
11 number.

12 My recommendations to other
13 states, very similar to the experience and
14 recommendations that Dan had. You need to
15 cooperate. You need to get all of the
16 requested information together prior to
17 them arriving on-site. Don't take a
18 defensive posture. This is a cooperative

19 effort. I'm sure that your match
20 calculations are correct for the seven
21 states that have gone before you.
22 Calculate your interest by section and

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1 title. We were calculating interest on
2 the entire amount. Our state treasurer
3 did not give us a daily breakdown, and it
4 took a considerable amount of time to go
5 back and actually calculate the interest,
6 once we found the correct way to do so.
7 Support your maintenance effort. And I
8 guess, most of all, is don't panic when
9 you get that letter or that phone call
10 saying, you know, a visit is imminent.

11 Recommendations to the EAC.
12 Some of this is hindsight. Had your
13 office been in place when this began, I
14 suspect we would have received a little
15 bit more guidance than we did, so we're
16 sympathetic take to that. States needed

17 the guidance. They needed the training,
18 and I am not so sure that we still don't
19 need some training.

20 We also need questions answered
21 in a timely manner. We're still waiting
22 on approvals and trying to get answers to
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1 questions so we can finish up with the
2 audit. We recognize that you are
3 challenged with the resources, just like
4 we're. Just as you have, we have gotten
5 through it the best way that we can. So I
6 thank you for the opportunity to talk
7 about our audit.

8 CHAIR DAVIDSON: Thank you. I
9 think that the purpose of today was
10 learning what we can do better, obviously,
11 and we know that we have some areas that
12 we need to actually meet the road and do a
13 better job. I know that from the very
14 beginning, when we hired Roger, was the

15 first one we brought into the office. We
16 tried to take him to as many meetings as
17 we could to answer questions and to be
18 able to get some guidance.

19 Obviously, any time that we do
20 that is a help to states and to the
21 directors of the states. They are going
22 to be on the program next week at the

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1 NASED meeting. Hopefully, the states will
2 be really intent on being there. Some of
3 the things that they have learned and what
4 you have learned, hopefully, you will be
5 able to share with the states. Getting
6 answers back faster to the states,
7 obviously, is one of the areas that we
8 need to improve on.

9 I appreciate you all coming and
10 talking to us on how everybody can improve
11 the process. We learned from lessons,
12 definitely, and that's what we need to

13 take and put into place.

14 Commissioner DeGregorio, you

15 said you had questions.

16 COMMISSIONER DEGREGORIO: Madam

17 Chair, we talked about numbers all day, it

18 seems like. You all are dealing with

19 that. I don't need if you feel like

20 you're in front of Simon, Randy and Paula

21 today. But Roger and Chris, you have

22 identified in the audits that you have

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1 completed and the ones you are working on

2 right now, you have articulated a little

3 bit this morning about some of the issues,

4 but you talked about matching funds and

5 the use of HAVA funds. And you have

6 identified this 4.8 million dollar figure.

7 It is relatively small when we're looking

8 at the amount of funds that were expended.

9 Is there a common theme that you

10 are finding that the EAC and our staff can

11 focus? As the Chair said, we're going to
12 do something at NASED this weekend, but
13 that we can continue to focus upon and
14 help the states who are continuing to
15 spend this money do a better job and be
16 prepared for these audits, to make sure
17 that they are spending them in a proper
18 way?

19 MR. LAROCHE: Initially, we
20 heard there was funds going to agencies
21 which didn't have experience that could
22 lead to problems. One thing we found is,
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1 basically, states are trying to do the
2 right thing. People are not trying to get
3 over on us. We have heard the need for
4 quicker response to questions. I think
5 when EAC put out its Frequently Asked
6 Questions About Eligibility, I think that
7 was an excellent document. It answered
8 specific questions, what can you use 251

9 funds for, those kinds of questions. I
10 don't know what mechanisms to re-enforce
11 to some of the states that they need to
12 take a look and read that stuff because
13 it's out there.

14 I don't know, in terms of
15 training, whether EAC has authority to
16 fund any training for states other than
17 putting it on themselves. It really is, I
18 think, an issue of states becoming
19 familiar with these federal requirements
20 attached to the federal dollars.

21 So how do we help states learn
22 about those requirements. Putting stuff
201

1 up on the web site is good. I think there
2 needs to be more done in order to get that
3 information to the states at the level it
4 needs to be.

5 COMMISSIONER DEGREGORIO: Thank
6 you. And Marci, in fact, I delivered your

7 audit last month, and the kind way you
8 took it. I think your staff member was
9 very interested in it because she had
10 worked on it. At the state level, we
11 recognize it appears to many folks at the
12 state level this is first time they have
13 ever had to deal with federal money.

14 Roger, are you getting support
15 at the state level from other state levels
16 that deal with auditing, spending of
17 federal dollars because they get plenty of
18 it from other agencies to help you in this
19 process. It doesn't appear that you have
20 gotten many dollars.

21 MR. LAROCHE: No, we haven't.
22 We even contacted our state auditor's

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1 office because we thought, okay, they are
2 the ones that are going to come over and
3 take a look at this. Talk to the auditor
4 at the front end instead of after

5 everything is said and done. We didn't
6 get the support from them. We were very
7 disappointed. We had one agency that at
8 first was willing to just kind of do an
9 administrative program for us, and then as
10 they got into looking at the grant in more
11 detail, they backed out. And we asked for
12 people who had recently retired or could
13 come in and we could work with them part
14 time. They gave us a list of names but
15 nobody was willing to really take on the
16 project once they found out it varied or
17 differed greatly from our grants.

18 MR. GLOTZER: In the case of
19 Texas, you're talking about a lot of
20 different agencies. For example, HAVA is
21 extremely different than other grants I
22 have worked on. It has fundamental

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1 differences, which can pose a challenge.

2 We have what's called the uniform grant

3 management standards that's essentially a
4 combination of the circulars. The state
5 is trying to centralize, basically, the
6 electronic grant system as much as
7 possible, but again, you have such a
8 variance in programs, so it's really a
9 matter of getting guidance from people.

10 CHAIR DAVIDSON: Commissioner
11 Hillman.

12 COMMISSIONER HILLMAN: Yes.
13 Thank you. My first question for Curtis
14 and Roger is to help me further understand
15 how IGs work in Federal Government. Is
16 there an entity that reviews what IGs do
17 in individual agencies to let us know
18 whether you are doing what you're supposed
19 to be doing?

20 MR. CRIDER: We undergo a period
21 of three years.

22 CHAIR DAVIDSON: Pull the mic

1 closer.

2 MR. CRIDER: There is a peer
3 review process we undergo. They will take
4 a look at the audit work that's been
5 performed to make sure we're doing what
6 we're supposed to do, and we're doing it
7 right.

8 COMMISSIONER HILLMAN: Thank
9 you.

10 To pick up on the last point
11 that was made about the uniqueness of the
12 HAVA grant monies, from your experiences
13 as a federal inspector, can you tell me
14 what some of these uniquenesses are so I
15 can appreciate this?

16 MR. LAROCHE: First of all,
17 they are like grants. Second, money was
18 given out based on certifications.
19 Certification, you get the money. So my
20 experience is when you get the money ahead
21 of time, you are less inclined to be
22 concerned about requirements because you

1 already have the money.

2 Also, because they are not
3 grants, there is no agreement between the
4 Federal Government, no written agreement
5 between the Federal Government and state
6 agency to define what the money can be
7 used for, what requirements attach to it,
8 what circulars. This is atypical in the
9 regular grant program.

10 To me, that's a big difference
11 between HAVA payments and federal grants.

12 COMMISSIONER HILLMAN: Is the
13 match requirement unique?

14 MR. CRIDER: There are match
15 requirements with different grant programs
16 so match requirement is not unusual.

17 MR. LAROCHE: To follow-up on
18 that, the language in HAVA, I think,
19 confuses it a little bit. You have to
20 read it a few times until it sinks in.

21 Five percent match could mean something
22 different than how it is calculated.

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1 COMMISSIONER HILLMAN: The
2 audits that the IG office does, does one
3 of the three -- you can't even say
4 employees, three people attached to the
5 IG's office, are they attached to each
6 audit or sometimes is an audit done
7 entirely independently by the contractor?

8 MR. CRIDER: We issue the
9 engagement letter on the audit that the
10 contractor does. We coordinate with them.
11 We look at what they are doing. If we
12 have an opportunity, we go down and do a
13 site visit when we have an opportunity to
14 do so, and we will review all their work
15 papers prior to a report going out. So
16 something will be done with each of the
17 audits to make sure it's done right.

18 COMMISSIONER HILLMAN: But it's

19 not necessary that either you or Roger go?

20 MR. CRIDER: I am the
21 contracting office representative, so I am
22 the one that is responsible.

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1 COMMISSIONER HILLMAN: And this
2 is just a small question for Texas because
3 I want sure. I understand when you talked
4 about the offset of the program, let's
5 see, program generated income generated,
6 is that program generated by the counties
7 leasing the equipment out or program
8 generated by the state leasing the
9 equipment?

10 MR. GLOTZER: The counties. The
11 state don't own the equipment. It is all
12 county-owned.

13 COMMISSIONER HILLMAN: You were
14 talking about the jurisdictions that do
15 their own elections, school board, city?

16 MR. GLOTZER: Right.

17 COMMISSIONER HILLMAN: Okay.

18 Thank you.

19 CHAIR DAVIDSON: I think, yes,
20 HAVA does make a unique situation in how
21 funds were given. As you say, even the
22 states had trouble with their own

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1 treasurers trying to get the interest
2 money back into the accounts because the
3 treasurers didn't understand because they
4 always got to keep the money themselves
5 for the state, instead of it going into an
6 interest-bearing account toward HAVA. So
7 not only did you get no support or didn't
8 get zip from other agencies, even your own
9 areas of state government sometimes fought
10 you on some of the issues.

11 I know it does make it very
12 difficult because HAVA is unique in so
13 many ways, and I think that was one of the
14 things, when the first meeting of the EAC

15 and I was sitting in the audience. And
16 that is when this circular started going
17 around because they thought if we can get
18 out from underneath some of this.
19 I think it would be helpful to states to
20 see the ones that have gone through it to
21 say and give your experiences of what you
22 have had to go through, and that the IG

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1 does have the authority to come in and
2 review and look at it, and write reports.
3 And we have to act upon that at the EAC.
4 I think that it would be very helpful also
5 for them to hear from you folks as well as
6 us because I think we'd have more people
7 attend our sessions if they knew the
8 importance of it. Because sometimes we
9 see them leaving. I know Roger talked
10 about sometimes we didn't have the crowds
11 that we wanted. So I think that we have
12 to look at how can we train more

13 individuals and maybe do a better job
14 getting information out, but I think it
15 would be helpful for them to hear from the
16 actual states themselves that's been
17 through the process. I encourage you to
18 do some of that. That would be helpful
19 for us.

20 CHAIR DAVIDSON: I do
21 appreciate all of you coming. Obviously,
22 we ran an hour over the time limit. Next
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1 time, we'll be better prepared in how long
2 these sessions take, and time them out
3 properly. So thank you very much for
4 coming and sitting through a long day and
5 being part of our panel in discussing a
6 very important subject today.

7 So in closing, I have got a
8 couple of remarks. The EAC March meeting,
9 March 8th meeting, that will be
10 rescheduled, and it has not been finalized

11 when the date will be, but please check
12 our web site at www.eac.gov for future
13 updates on that. As you can see, we've
14 got a lot to do, a lot of activity
15 surrounding the new certificate program.
16 So we'll be updating that constantly on
17 our voting certification program, so make
18 sure you definitely visit our web site.
19 If you want to be on our list to get our
20 monthly electronic newsletter, we would be
21 more than happy to sign you up.

22 So thank you very much for

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1 coming, and taking part in our meeting,
2 whether you are in the audience or as a
3 panel member. Thank you.

4 Motion to adjourn?

5 COMMISSIONER HILLMAN: So moved.

6 COMMISSIONER DEGREGORIO:

7 Second.

8 CHAIR DAVIDSON: Thank you.

9 (Whereupon the above meeting
10 was adjourned at approximately 2:10
11 o'clock, p.m.)

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2 CERTIFICATE OF COURT REPORTER

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4 I, Jackie Smith, court reporter in and for
5 the District of Columbia, before whom the foregoing
6 meeting was taken, do hereby certify that the

7 meeting was taken by me at the time and place
8 mentioned in the caption hereof and thereafter
9 transcribed by me; that said transcript is a true
10 record of the meeting.

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Jackie Smith

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