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HEARING ON OVERSIGHT OF HAVA IMPLEMENTATION

HEARING

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, FEBRUARY 9, 2005

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OVERSIGHT OF HAVA IMPLEMENTATION

WEDNESDAY, FEBRUARY 9, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The committee met, pursuant to call, at 10:10 a.m., in room 1310, Longworth House Office Building, Hon. Robert W. Ney (chairman of the committee) presiding.

Present: Representatives Ney, Ehlers, Mica, Doolittle, Miller of Michigan, Millender-McDonald and Brady.

Also Present: Representatives Hoyer, Holt, Jones of Ohio and Lofgren.

Staff Present: Paul Vinovich, Staff Director; Matt Peterson, Counsel; Chris Otillio, Legislative Director; Jeff Janas, Professional Staff Member; George Shevlin, Minority Staff Director; Charles Howell, Minority Chief Counsel; Matt Pinkus, Minority Professional Staff Member; and Tom Hicks, Minority Professional Staff Member.

The CHAIRMAN. The Committee will come to order.

The Committee is meeting today to look back at the 2004 elections and learn more about what went well with our election system and what needs to be improved. By gaining a greater understanding about what happened in the recent past, we hopefully will be able to ensure the effective administration and successful operation of our elections in the future.

On November 2 of 2004, our nation conducted the first Federal general election governed by the requirements and instructions set forth in the Help America Vote Act of 2002, HAVA, the landmark election reform law that established new election administration standards that each state must meet and, number two, provided crucial federal dollars to assist states and localities in updating and improving their voting system so as to avoid an unfunded mandate.

Mr. Hoyer is here and was the driving force behind HAVA and was correct in what he pursued. We had a wonderful working partnership with others, too many to name, but Mr. Blunt, Mr. Conyers and many other Members in the House and in the Senate, with Senators Dodd and McConnell and Bond, and had honest, real conference committees where we actually read these things 30 or 40 some times. Wonderful staff both sides of the aisle.

But HAVA went way beyond punch cards and went into a serious look at ways to tackle issues of disenfranchisement, tackle the issues of persons who have a form of a disability and what we can do to help them vote in secret for sometimes the first time in their lives; also, the college program, the high school program and cre-

ated the Elections Commission. I have done this many times, but I thank Mr. Hoyer for remarkable work. There were people who told both of us, why are you doing this or you shouldn't be doing this, but we all continued on and I think really passed a remarkable bill.

As Election Day 2004 approached, election officials faced numerous logistical challenges. First, aggressive voter registration drives resulted in election officials having to process and handle a greater than usual number of voter registration forms, many of which were submitted at or just before the prescribed deadlines and several of which were fraudulent.

In addition, during the just-concluded election cycle, thousands of jurisdictions rolled out new voting equipment for the first time and thus had to provide extensive operational training to poll workers as well as instructions to millions of voters on how to properly use it.

Finally, election officials confronted the highest rates of voter turnout since 1968. The Committee for the Study of the America Electorate estimates that roughly 120 million citizens cast ballots in the most recent Federal election, nearly 15 million more voters than in 2000.

In the weeks and months leading up to the Election Day, we heard stories of gloomy predictions about impending electoral meltdowns that would make the difficulties experienced in Florida in the 2000 Presidential election look minor in comparison. We were told voting equipment malfunctions would be widespread, delaying the report of election returns and potentially losing or stealing thousands upon thousands of votes. There were also allegations that a massive intimidation and suppression effort would disenfranchise many voters. Some forecasted that all these factors would combine to create a perfect storm in an electoral process that would paralyze the country's election systems.

Yet, despite the formidable challenge faced by election administrators and notwithstanding the predictions of the skeptics, I am pleased to say that the 2004 election was carried out without any major problems or glitches. As the Associated Press reported, the big surprise of the 2004 election was that, for the most part, the voting went smoothly. By the close of the polls across the country, despite heavy turnout, there were only scattered reports of equipment trouble and human error at the voting stations. And none were major.

This was confirmed on election night by Joe Lockhart, Kerry campaign spokesman and strategist, who said, quote, "We think the system has worked today". There were thousands of lawyers deployed to make sure that no one tried to take advantage or unfair advantage, and by and large it has worked. I have seen very few reports on irregularities and even the ones we have seen you will find that there is not much going on, end of quote.

Thus, to paraphrase Mark Twain, the rumors of the demise of the American election system were greatly exaggerated. For this, we must give enormous credit to the state and local election officials throughout the country for their hard work and extensive planning and preparation for this year's elections. We must also express tremendous gratitude to the millions of volunteer poll work-

ers and election judges without whom the election process would be incapable of going forward. The accomplishments of those involved in the administration of this year's elections are especially impressive in light of the intense scrutiny under which they were operating in the United States.

All of this is not to suggest that the 2004 election was completely problem free and went off without any hitches. There were problems. In any undertaking involving more than 100 million people taking place on a single day in a country as vast as ours, there are bound to be mistakes. However, contrary to the overheated assertions of some, the voting problems that occurred did not disproportionately impact the voters of only one party, but rather affected voters from all political parties, Democrats, Republicans and Independents alike.

There are those who have taken the scattered instances of irregularities and constructed out of them elaborate conspiracy theories about massive vote manipulation and election fraud. To the individuals that have put these theories out there, the mere fact that their candidate lost is sufficient proof that the election must have been stolen in some people's minds. These conspiracy theorists are impervious to evidence, logic and reason. Therefore, I don't think some people—and I am not referring to particular Members; I am just referring to people across the country—I don't think you can ever convince them that the candidate got beat.

It is nothing new to the American system, I would note. It has happened on both sides of the aisle. We can't worry about trying to convince those who simply can't accept this reality.

I am, however, much more concerned about some of the criticism that has been lodged by some Members, which criticism has gone beyond pulling out particular instances or thought process or administrative errors and has called into question the competence of state and local officials to effectively administer Federal elections. The individuals that have made these assertions obviously believe that a federal takeover of the voting process is the necessary solution to whatever election-related problems our country still faces. But I believe the administration of elections by a massive federal bureaucracy here in Washington, D.C., would represent the worst possible solution to the voting problems that exist.

I happen to agree with Thomas Jefferson who once said that the government that governs best is the one closest to the people. In this instance, it is the state and local election officials who are closest to the actual voting process and who are in the best position, the locals, to understand what needs to be done to improve the functioning of elections in their respective communities. The Federal takeover of the process from A to Z would not improve our democracy. It would threaten it. It would make our system worse, I believe, not better.

The purpose of today's hearing is to separate the facts from the fantasies, to begin sweeping away the innuendo and any attacks that are out there and begin to understand what actually did happen in the past election day. Moreover, it is my hope that today's hearings will provide us an opportunity to learn how well HAVA is working or not working at the grassroots level. We look back not to dwell on the past but to help us move forward so we can learn

from any mistakes that have been made and try to avoid, obviously, repeating them. We can also learn from what was done right and thereby make those best practices more widespread.

While the election is behind us, 2005 will be a very important year in terms of HAVA and its implementation. While the press and public tend to focus on these issues only around election time, the fact is work is constantly under way to make sure our elections run properly. It is an ongoing, endless process.

I look forward to hearing from our witnesses about that important work. We are fortunate to have with us today a distinguished panel—two panels of witnesses, all of whom play vital roles in our election systems.

Our first panel will consist of the current commission of the Election Assistance Commission, which was established by HAVA. And they are here to help. They are the good men and women of the country. The Commission was established by HAVA to help States and localities implement the new laws and requirements.

On our second panel, there will be four Secretaries of State who oversaw elections during the 2004 process; and, of course, they have to deal with HAVA and how it is implemented.

With that, I yield to my ranking member.

Ms. MILLENDER-MCDONALD. Thank you so much, Mr. Chairman.

I am thankful to you for holding this hearing. I thank you for your sensitivity to the request of this ranking member and others to ask for a hearing to bring about the Secretaries of State, especially those where their States had quite a bit of difficulty. So I am very grateful to you and your sensitivity for that.

I hope that this hearing will be the first of several hearings that will review how the Help America Vote Act, HAVA, was implemented and how the first post-HAVA election was conducted. HAVA, in my opinion, was one of the greatest bipartisan pieces of legislation this body has produced and passed.

I am happy to have with us today the Minority Whip, the Congressman out of Maryland, Mr. Steny Hoyer, who was the architect of this piece of legislation, along with you, Mr. Chairman, because you two came together to try to see whether you could fix that which was broken in the year 2000 after that election. So I thank you very much.

The 2000 Presidential election brought to light many problems with the election process. We heard reports of a wide range of voting and voter frustration. According to the 2001 MIT CAL–TECH study, 3 million voters were turned away from the polls without casting a vote on Election Day 2000.

This committee worked tirelessly to enact HAVA as a solution to these and other election concerns. As a result of HAVA, $3.5 billion were appropriated to the States to improve the voting process. HAVA set standards so voters are not turned away from the polls without casting a vote. Voters not listed as registered must be given a provisional ballot to be verified later and counted. But some very early election surveys have found that who is given provisional ballots and how they are counted vary from State to State. Unfortunately, there were reports of eligible voters being turned away from the polls without casting a provisional vote.

Also, overseas and military voters reported problems with receiving absentee ballots. Now my staff has had the opportunity to speak with a number of Americans living abroad and listening to their voting experiences.

Mr. Chairman, I am going to take a personal privilege, I guess, at this time, because I am deeply concerned about the lack of—and especially two Secretaries of State who have refused to come to this hearing today. And those two Secretaries of State have had some of the most egregious or at least alleged egregious irregularities of voting in their States.

You know, as we celebrate Black History Month this month, I can't help but reflect on those whose lives were taken because they were not given a right to vote. They had to pay poll taxes back in those days and even had to learn the Constitution of the United States in order to vote. I am very concerned that today we find that some of their offspring are having some of the same problems. They were denied voting in some of the States, especially, as I have been told by data, Ohio and Florida.

We witnessed about a week or so the elections in Iraq and how those persons were very courageous and came forth in spite of the threats of insurgents to vote. And when they voted they put up an index finger with a mark on it showing their solidarity and their appreciation for voting. It is really telling that in this country of ours, the greatest democracy on earth, there are some folks who cannot lift their index fingers to say that they had a right to vote because they were denied that.

I just want to tell you, Mr. Chairman, the problems in Ohio were many. But the miscalculation of voting machines led to lines of 10 hours or more that disenfranchised scores if not hundreds of thousands of predominantly minority and Democratic voters. Ohio's Secretary of State's decision to restrict provisional ballots resulted in the disenfranchisement of tens if not hundreds of thousands of voters, again predominantly minorities and Democratic voters.

This Secretary widely had a decision to reject voter registration applications based on paper weight. Amazingly, forms obtained from this Secretary of State's office did not comply with his own paper weight directives. The Secretary of State's decision to prevent voters who requested absentee ballots did not receive them in a timely manner and from being able to receive a provisional ballot. And yet the arrogance of this Secretary of State to not be here today is an affront to those persons who elected him to office.

This is the people's House. We are here with a fiduciary responsibility to protect the people here in this House. Yet the arrogance of this Secretary of State and the one from Florida who refused to come is really an affront, Mr. Chairman.

The voting problems encountered in Florida has been documented by the Election Protection Coalition: Improper requests for identification, confusion about how to implement provisional ballot requirements, concerns about the accuracy and functioning of voting machines, some poll workers who were, at best, untrained or at worst actively dissuading voters from casting votes, lack of required assistance of disabled voters.

You know, Mr. Chairman, I am very angry, disturbed, that folks had to wait in line for 10 hours in this democracy and still had to

be turned away. The disenfranchisement of the hundreds of thousands of folks, even with HAVA there in these States to be implemented, was ignored.

So in order to restore the trust, the voters' trust, Mr. Chairman, and to mitigate the cynicism that is rising across this country with voters saying, do we really have a democracy, can we really vote in this great country of ours, I would suggest to you, Mr. Chairman, that you then take Congress to Ohio and Florida, if they do not have the sensitivity to come here. If they do not believe that they were elected by those voters in those two States who represent this people's House, that I will say to you Mr. Chairman, whether it be by subpoena or what have you, that we have before us in a timely manner these Secretaries of State who did not have the decency to come before us today.

I am hearing that one is in town today and wanted to send a director of elections to come in his stead. That director was not voted by the people. He was voted by the people.

So you can hear in my voice my deep regret that these Secretaries of State sought to not come today to the people's House to answer questions about some of the irregularities that took place in both the 2000 election and the 2004 election where in this democracy of ours we still have disenfranchisement of voters.

I yield back.

The CHAIRMAN. Thank the gentlelady.

Mr. Holt, you are welcome to come to the dais. I would note, in the regular order of the Committee, I wanted to get to the Members of the Committee to speak and ask questions.

Let me just say, though, and I said this on the floor of the House, there were certain things—my Secretary of State, for example, there were some allegations of some precinct situations in Franklin County, and I defended Mr. Blackwell on that because, frankly, he doesn't allocate the number of machines, so I did defend him on some of those points that were raised. And we are going to have hearings, but I don't want to get into case by case, county by county in Ohio.

But, having said that, I think the Secretaries of State should be here. I am disappointed that they are not here. We will have other opportunities soon for them, but if they don't come here we will go there, and I don't have any problems going to Ohio and Florida. I don't know the rationale of why they aren't here, but I think this is important enough that they should be here.

So that old expression, that mountain to someone or someone to the mountain, we can go to both states, and I have no problems in doing that. We can have disagreements, but, you know, you can't run and you can't hide. So, therefore, I have no problems at all to take us to the states. I commute anyway every week. I will go to Columbus.

The CHAIRMAN. But I will share a terrible frustration that they are not here.

Ms. MILLENDER-MCDONALD. Mr. Chairman, irrespective of their rationality for not being here, the mere purpose that these States have been in the news daily shortly after the elections again should beckon for them to come here to answer questions that have not been answered by those who have that fiduciary responsibility, and

those are the secretaries of state who conduct these elections. So for them not to be here, I hate to start off as the Ranking Member for the first time on this committee, I guess, being so vocal, but I don't curtail my thoughts on things that I feel are unjustified, and I do not want to even listen to any rationality that they have.

The CHAIRMAN. I thank the gentlelady. We will work with our Ranking Member to have either additional hearings where they will come here, or we will go to the states, and maybe both.

Any other additional opening statements by Members?

Mrs. JONES. Mr. Chairman, I am Stephanie Tubbs Jones. I don't serve on the committee. I come from Ohio. I would like to thank you for being a man of your word. During the debate on the objection to the vote in Ohio, you stated that you would be holding hearings both in Washington and in Ohio about the voting activity. I just want to thank you for being a man of your word. I really appreciate it. When you decide to go to Ohio, I will be there with you. Thank you very much.

The CHAIRMAN. Thank you. I look forward to it.

Mr. Hoyer.

Mr. HOYER. Mr. Chairman, I have an opening statement, but if I can, I would include it in the record. I would simply say I thank you for holding these hearings. I thank you, as Stephanie Tubbs Jones has done, for being willing to confront in a bipartisan, nonpartisan way the issues that are raised with reference to ensuring that Americans not only have the right to vote, but they are facilitated in that vote. That is clearly the intent of HAVA.

I have four or five things that I want to focus on with you. You and I have had the opportunity to discuss them. I look forward to working with you. If there is no objection, I would like to include my opening statement in the record.

The CHAIRMAN. Without objection.

Mr. HOYER. Thank you.

The CHAIRMAN. Mr. Brady.

Mr. BRADY. Mr. Chairman, I would love to go to Ohio. My dad was born there. I would never mind going to Florida, being from Pennsylvania. But if we have subpoena power, I would like to see them come here for a simple reason. I don't want to go to Ohio and I don't want to go to Florida and then have them not appear there either. There is no assurance, I don't think, if we go to Ohio—we have somebody that is right in town right now. Even though we are being in this town, in this State, can we be assured they will be there if we go there? This lady would be irate.

The CHAIRMAN. I tried subpoena issues with kind of a wealthy gentleman who ran a 527 last year, and I wasn't too successful in getting him here. Maybe we could get him there with our secretary of state. That would be kind of nice. Having said that, we will work to get them here.

Any other additional statements? Mr. Ehlers.

Mr. EHLERS. Just one comment, Mr. Chairman. I have been in this business for probably longer than I should have been. The Presidential election 4 years ago and the problems that arose there were absolutely no surprise to me. Elections are run by individuals who are by and large very well-intentioned, trying to do a good job. Many of the poll workers do this only a few times a year, and they

are wonderful people, they are willing to dedicate time and put in long days, but mistakes get made.

In my very first election, there was a grievous error in one precinct in which the names were switched. In other words, people who thought they were voting for me were voting for my opponent. People who thought they were voting for my opponent voted for me. That is just an example of what goes on. I personally am still convinced that Richard Nixon won the election in 1960 until Mr. Daley stole it from him in Illinois, and that LBJ never rightfully won his first election to the U.S. Senate.

A lot of things go wrong in elections, and we have to be aware of that. Our goal here should not be vituperative or accusatory, but simply saying we are doing our best to make sure that the system works fairly, properly, and, as Mr. Hoyer said, that voting not just takes place, but it is facilitated for the average citizen, because most citizens—and I have heard a lot about educating the voters. That is nonsense. People who do something once or twice a year, you are not going to educate them. You have to develop a system that really facilitates the proper operation. That is why when we did HAVA, I wrote the technical standards part and insisted that human factors be part of the evaluation, because I think the human factors are very important. When you design the system, you want to design it so that individuals who do this only a couple of times a year are not confused, and they get it right, and that everything is done properly and fairly. Thank you.

The CHAIRMAN. The gentlelady?

Mrs. MILLER. Thank you, Mr. Chairman. Just a brief comment as well. I don't really have an opening statement. It is true. As you mentioned, I had been a secretary of state in Michigan for 8 years before I got this job. Elections are not perfect. In fact, what happened in the Presidential election 4 years ago may have shocked much of the Nation, but a lot of people that were involved in the elections community were aware of various problems that had existed, and sometimes they just didn't come to light to the extent that they did then.

And so I certainly want to commend both our chairman and Mr. Hoyer as well for their work on HAVA and all the great work that came out of this committee on that, because I think every one of us understands that elections are the foundation, quite frankly, to our democracy here. If at any time there is any citizen that feels that their vote will not be counted properly, that is a problem for all of us that we have to address.

I will tell you, though, as we get into the testimony, I think it is important that we do not have selective outrage in some States and perhaps not others. For instance, in some of the provisional balloting that was done, I was aware that I think in every battleground State this year, there were lawsuits filed to allow people to vote provisional ballots in any precinct even if they were not registered there. This was done, I believe, erroneously, because, of course, if you have more than one congressional district—in a lot of large areas they do. In a city—for instance, in a city like Detroit, in Michigan, we have several congressional districts drawn throughout the city, and so why would you want to be disenfranchising people not to be able to vote for their Member of

Congress if they were in the wrong precinct? Yet those lawsuits were, as I say, in all the battleground States. I know in Ohio as well. I will speak for Mr. Blackwell. He was upheld by the court in the provisional balloting that he did there.

But again I think it is very important for all of us that we do recognize how important it is that every single vote counts.

I will also just mention since we are talking about this and not having people disenfranchised, I was very proud that when I was the secretary of state of Michigan to be recognized nationally by the NAACP with the highest grade in the entire Nation for making sure that in our urban areas, et cetera, that every minority, every woman, everyone had an opportunity to have their vote counted properly with election reforms and that.

I would say that my approach to elections is the same as my approach to life, I think. In the largest room is always the room for improvement. And with all the improvements that we are going to be hearing about that happened under HAVA in this last Presidential election, it is still not a perfect system. There is plenty of room for improvement. I am certainly looking forward to working with all of you to continue to improve that system.

As we talked a little bit earlier about technology, the technology is out there. It is unbelievable the remarkable technology that can be utilized for individuals to make sure that their vote is counted properly, quickly, in a timely fashion, et cetera. I am very interested to hear the testimony of our panelists. Thank you.

The CHAIRMAN. Any other comments? If not, we will move on to our four Commissioners. We have Commissioner Gracia Hillman, the current EAC Chair who was recently at the swearing-in ceremony—I was there, it was a wonderful event, with Mr. Larson, also with Congresswoman Pelosi; and also Commissioner Paul DeGregorio, the current Vice Chair of the EAC; Commissioner DeForest, known as Buster, Soaries; and Commissioner Ray Martinez.

I just wanted to note, and we will get on with the process here, but I think all four of you have served with integrity. I think you were wonderful appointments. You have taken your job seriously. I think the Commission has functioned as the law has set it up, in a wonderful manner. I think you have added in a short period of time and with some difficulties beyond your control of the appointment process and moneys and things of that nature—you just proceeded on, all four of you. I think you are four remarkable people that have added a lot already to the Commission.

With that, we will start with the Chair.

STATEMENTS OF GRACIA HILLMAN, CHAIR, ELECTION ASSISTANCE COMMISSION; PAUL DeGREGORIO, VICE CHAIR, ELECTION ASSISTANCE COMMISSION; RAY MARTINEZ, COMMISSIONER, ELECTION ASSISTANCE COMMISSION; AND DeFOREST BLAKE SOARIES, Jr., COMMISSIONER, ELECTION ASSISTANCE COMMISSION

STATEMENT OF GRACIA HILLMAN

Ms. HILLMAN. Thank you very much, Mr. Chairman.

Good morning, Mr. Chairman and members of the committee, Mr. Hoyer, Mrs. Tubbs Jones, and I don't know if Mr. Holt is still

there. Thank you very much for your kind words. I would say that I am absolutely delighted to be serving with the members of this Commission. I couldn't ask for better colleagues. It has been a wonderful experience.

Vice Chairman DeGregorio and I will take just a few minutes this morning to review the highlights from our testimony. We appreciate the vested interest that this committee has in our work. We recognize the importance of what you have done for America as the authorizers of HAVA, and we look forward to today's discussions.

Mr. Chairman, as you and the members of this committee know, HAVA represents an unprecedented effort by Congress to enhance the administration of Federal elections. Congress has matched HAVA mandates with funding and guidance through EAC while recognizing the important role of the States in conducting Federal elections.

HAVA works, and it is off to a good beginning. EAC is committed to follow the prescripts of HAVA to make certain that the law is fully implemented in a uniform and consistent manner. HAVA has also provided an excellent vehicle for the Federal Government through EAC to work in close partnership with the States.

The issues and problems that came to the forefront during the 2000 presidential election were significant. It is clear to us, Mr. Chairman, that HAVA was not contemplated as a short-term or partial solution to these problems. Rather, HAVA sets out a comprehensive program that spans the course of many years, and that is how it should be.

EAC is in a very different position today than when we first appeared before this committee 1 year ago. We have established EAC as a fully functioning Federal agency. Unlike last year, we now have a budget that permits us to have a staff and enables us to conduct a modest amount of research and study. Let me take a moment to highlight some of the significant accomplishments that were achieved in 2004.

Working with GSA, we distributed over $1.5 billion in Title II payments to the States. As of today, States have received over $2.2 billion in HAVA funding. I call your attention to the chart on pages 4 through 6 of our testimony.

On the matter of provisional voting, let me note that it was not a new concept for all States; nonetheless, it turned out to be a painful exercise for many. Provisional voting in 2004 became what was the hanging chad in 2000. Diverging definitions of jurisdiction drew national attention to provisional voting. There was litigation in at least five States, and while this may seem like negative and unwanted attention, these lawsuits produced a reasonable and workable rule of law regarding provisional voting.

Having said that, let me state that provisional voting works. I call your attention to the chart on pages 9 and 10 of our testimony. In the November 2004 election, over 1 million votes were counted through provisional ballots. Based on a preliminary examination of data reported to us from 41 States, we find that of 1.5 million provisional ballots cast, 68 percent were counted. Some will ask, what about the 500,000 that weren't counted? We don't know the answer to that yet, but we will once we have completed our election day

study and conducted hearings. All we know for now is that provisional voting identified 500,000 voters who were deemed not eligible to cast a ballot even though we suspect that unfortunately in many instances the reason was that the person appeared in the wrong jurisdiction.

I have mentioned our election day 2004 study. Through EAC, the Federal Government will collect and study a wide range of data related to the November election. The data that is being collected on both a county and State level include information about ballots cast and counted, the types and numbers of voting systems used, military voting, and the numbers of people registered and purged, and methods of voter registration and purging. Once the final data is received by the end of March of this year, we will compile a comprehensive report. The information will help measure future progress under HAVA.

For many years now, America has experienced a shortage of people to work at the polls on election day. Election officials depend on people to volunteer for this 1- or 2-day job, but few respond to the call for long hours and short pay. To assist with this critical problem, EAC has two components to its national poll worker initiative. One is the highly successful HAVA college poll worker program. The other component is targeted to engage the involvement of corporations, private organizations and private citizens to help election administrators recruit people to serve as poll workers.

Through EAC's efforts in 2004, 1,700 college students worked at the polls that we know of, and 12 States reported a full complement of poll workers at every location. EAC's observations from the November election suggest that many things were done right, but there is still a lot to be done. Vice Chairman DeGregorio will discuss this a little further in his remarks.

I will wrap up my presentation by quickly reviewing the key components of our research and guidance agenda for 2005. We are committed to providing the guidance, assistance and information necessary to aid the States in their implementation of HAVA. This will include guidance on voluntary voting system standards, provisional voting, voter identification requirements, voting information through signage at the polls, and we will review and update the national voter registration form and the instructions that accompany that form.

Our priorities also include our efforts to assure that HAVA funds are spent properly and in compliance with the law. As reported earlier in my remarks, States have already received nearly $2.2 billion in Federal funds. EAC will monitor the use of these funds through regular reporting from the States and through annual audits.

Mr. Chairman, I conclude my remarks by noting that HAVA is improving the Federal election process. Election reform is not a process of immediate gratification. Rather, elections are complex and dynamic events that require years of advance planning and careful thought. Changing and improving that process likewise takes planning, careful thought and, most importantly, time.

I continue to feel privileged and honored by having the opportunity to serve America with my distinguished colleagues as a

member of the Election Assistance Commission. Thank you for the opportunity to address this committee today.

The CHAIRMAN. Thank you.

The CHAIRMAN. We will move on to Commissioner DeGregorio.

STATEMENT OF PAUL DeGREGORIO

Mr. DEGREGORIO. Good morning, Mr. Chairman, Ranking Member, members of the committee, Mr. Hoyer and visiting Members.

As our Chair indicated, HAVA has been successful in improving the process of conducting elections in the United States. As one who served for 8 years as a local election official, I believe this Federal assistance has been long overdue.

I would like to complement our Chair's remarks and also build on HAVA's successes in 2004 and how the EAC will expand that success to help foster an environment of excellence in election administration in America. On election day 2004, EAC Commissioners traveled to several States to observe firsthand the events, successes and problems that occurred in the polling places of America. While the Commissioners saw many HAVA successes, such as persons casting provisional ballots, we also witnessed poll workers who were not always so clear on when a provisional ballot should be offered to a voter. We saw polling places where informational signs were posted and polling places where the required signage was missing. My colleagues and I saw voters enjoying the benefits of upgraded and advanced voting machines, as well as voters who cast their ballots on devices that were well over 50 years old. We witnessed polling places that operated with the utmost of efficiency and precincts where voters stood in lines for hours to exercise their right to vote. The data that we are now collecting from the States on the 2004 voting process, including voting by our military men and women, will further inform us and others on what worked and what can be improved.

In 17 States funding by HAVA further influenced the 2004 election through the development and use of statewide voter registration databases. These databases are mandated under section 303 of HAVA and require States to develop a single, uniform, interactive voter registration list by 2006. Once implemented, such lists will go a long way toward reducing duplicate voter registrations, updating addresses, reducing the need for provisional voting and certainly help prevent fraud.

HAVA directs the EAC to develop voluntary guidance to the States on these databases. We have impaneled a working group to work with the States to identify their questions and needs so that we have such guidance in place by this summer.

One of the most important and tangible elements of HAVA is the Federal Government's significant financial assistance to the States to update and procure voting equipment. Since the 2000 elections, about 25 percent of U.S. voters have experienced new voting devices. If States are to be in compliance with HAVA deadlines, we fully expect that another 30 percent of U.S. voters will experience new voting equipment in 2006. A significant number of States are now in the process of procuring new voting equipment, including equipment that serves the needs of the disabled community.

One of the EAC's most important mandates under HAVA is the testing and certification of voting systems. Fundamental to implementing this requirement is the development of revised voluntary voting system standards which will prescribe the technical requirements for voting system performance, security, auditability and human factors; in addition, to identify testing protocols to determine how well systems meet these requirements. Another important element is the certification of testing laboratories to ensure that competent resources are available to perform testing. The final element is the process of reviewing the system test reports to validate that systems have met their standards and therefore can be declared qualified for use in Federal elections.

Since the very first days of our existence, the EAC has fostered a close partnership with NIST to implement all of these important goals that it clearly outlined in HAVA. Our work on each of these elements is discussed in much more detail in our written submittance to this committee.

I would like to report that our EAC technical development committee is well on its way to producing draft voluntary system guidelines that will be vetted by the EAC Standards and Advisory Boards and the public and ultimately adopted by this Commission. Our charge to the Development Committee and to NIST has been to build upon and strengthen the existing standards particularly in the area of security of voting systems and to do so in the 9-month period that HAVA mandates.

We fully expect to see these draft guidelines in April of this year. We believe that the EAC's work will be of great benefit to the States as they take advantage of the significant Federal research and make their own determination of which of these guidelines and what particular voting systems might work for their election officials and for the voters in their States.

Mr. Chairman, as we conclude today's testimony, I certainly concur with our Chair and my colleagues that HAVA is improving the election process in America. HAVA has effectuated substantial change in a climate of intense scrutiny. Voting technology has improved. More eligible voters have been able to cast their ballots. Voters are better informed of their rights and how to exercise them. However, a vast amount of work is left to complete. More than a half of the country is in the process of upgrading its voting technology, implementing statewide voter registration databases and perfecting their processes for provisional voting and voter identification. These States need guidance. The EAC will provide it.

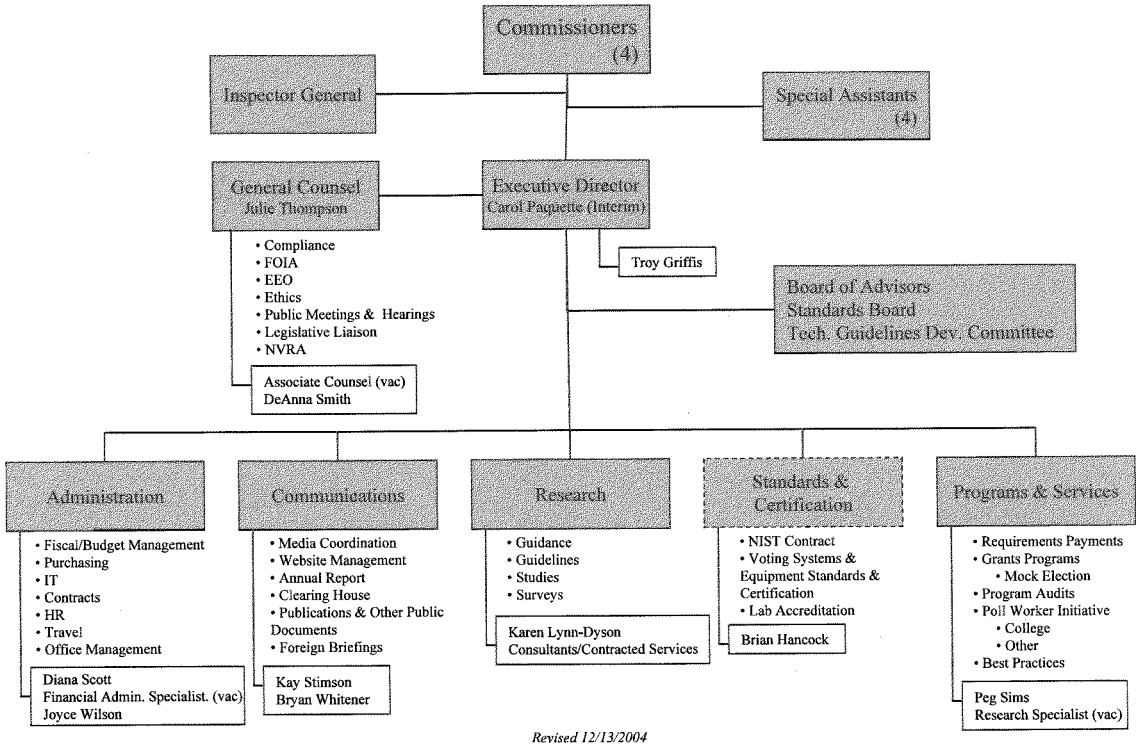
Mr. Chairman, thank you for the opportunity to address this committee today. It is an honor to serve on this Commission with these three distinguished Americans. We will be happy to answer any questions that you and other Members may have.

The CHAIRMAN. Thank you.

U.S. Election Assistance Commission

2005 Organizational Chart

22 FTEs
18 Positions Currently Filled



Revised 12/13/2004

ELECTION NEWS
Important information for you!

VOTER IDENTIFICATION

New Federal and State laws require voters who appear to vote in an election district for the first time to provide election officials with proof of identification.

ARE YOU...Voting in this election district for the *first* time?

If you answered YES, then you will be required to provide one of the following approved forms of identification.

Approved forms of photo identification:
(ID must be valid)

- PA driver's license or ID card issued by PennDOT
- ID issued by any other Commonwealth agency
- ID issued by the U.S. Government
- U.S. Passport
- U.S. Armed Forces ID
- Student ID
- Employee ID

Approved forms of non-photo identification:
(ID must include the name and address of the elector)

- Voter's identification card issued by the voter registration commission
- Non-photo ID issued by the Commonwealth
- Non-photo ID issued by the U.S. Government
- Firearm permit
- Current utility bill
- Current bank statement
- Current paycheck
- Government check

PROVISIONAL BALLOTS

New Federal and State laws provide voters with the opportunity to cast a provisional ballot under certain circumstances. County election officials will examine the provisional ballots within three (3) days after an election to determine if the individual voting that ballot was entitled to vote at the election district in the election.

ARE YOU...Eligible to cast a *provisional ballot*?

Individuals are to be provided the opportunity to cast a provisional ballot if:

- The individual appears to vote and claims to be properly registered and eligible to vote in the election district, but the individual's name does not appear on the general register and elections officials cannot determine his registration.
- Regardless of whether the individual's name appears on the general register, the individual does not have an approved form of identification the first time he appears to vote in an election district.
- An election official asserts that the individual is not eligible to vote. (In a Primary Election this includes voters who claim to be registered for a particular political party, but the general register indicates they are registered as a member of another political party.)

Individuals are required to vote by provisional ballot if:

- The voter is voting as a result of a Federal or State court order.
- A voter is voting as a result of an order extending the time established for closing the polls by State law that is in effect ten (10) days before an election.

Within three (3) days after the election, the county board of elections will examine the provisional ballot to determine the validity of your completed provisional ballot. A district election official will provide you with information for you to determine the status of your completed provisional ballot.

COMPLAINTS

New Federal and State laws provide voters with the opportunity to file a complaint based on the belief that a State or local elections official or employee has violated, is violating, or is about to violate provisions of Title III of the federal Help America Vote Act of 2002 (relating to uniform and nondiscriminatory election technology and administration requirements).

DO YOU...Believe election officials have failed to comply with Title III of the Help America Vote Act of 2002?

If you answered **YES**, then the information below will be helpful to you.

Potential circumstances for filing a complaint are listed below:

- An individual believes a State or local elections official or employee has violated the provisions of Title III that require a voter to provide an approved form of identification the first time he appears to vote.
- An individual is denied the opportunity to cast a provisional ballot.
- An individual believes a State or local elections official or employee has violated provisional ballot procedure.
- An individual believes information that is required by law to be posted in the polling place is incorrect, inaccessible or missing.
- An individual believes that the mail-in voter registration application form is incomplete or missing required information.

For more information, please see the Pennsylvania Department of State Notice relating to complaint procedures under section 402(a) of the Help America Vote Act of 2002 and section 1206.2 of the Pennsylvania Election Code. Also see the Statement of Complaint-Violations of Title III of the Help America Vote Act.

The Notice and Statement of Complaint are available at this polling place, the County Board of Elections, or at the Pennsylvania Department of State by calling 1-877-VOTES-PA (1-877-868-3772), or visiting www.hava.state.pa.us.

Edward G. Rendell,
Governor

Commonwealth of Pennsylvania

Pedro A. Cortés,
Secretary of the Commonwealth

UNITED STATES ELECTION ASSISTANCE COMMISSION

Military and Overseas Absentee Ballot Survey 2004

The following form and its attachments should be completed on-line. Completed forms should be returned to the United States Election Assistance Commission via email to SurveyResponse@eac.gov on or before January 31, 2005.

Please complete all of the fields below. Specific instructions relative to certain questions are found at the end of this form. If your question or concern is not answered in the instructions section of this form, please contact Brian Hancock at 202-566-3100.

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CONTACT INFORMATION

For each of the following questions please respond in the space provided, below.

STATE: [ ]

NAME: [ ]

ADDRESS: [ ]

TITLE: [ ]

PHONE: [ ]

EMAIL: [ ]

DATE: [ ]

ABSENTEE BALLOTS

For each of the following questions, please respond with data from each county or local election jurisdiction in your state. A sample spreadsheet has been provided for your convenience in responding to these questions.

Question 1. What was the total number of absentee and advance ballots transmitted by your State (including ballots transmitted by mail, fax, e-mail or courier) to (a) domestic military citizens, (b) overseas military citizens, and (c) overseas citizens (collectively, "military and overseas citizens") for the November 2, 2004 general election?

Question 2. What was the total number of absentee ballots returned to your State by (a) domestic military citizens, (b) absent military citizens, and (c) overseas citizens for the November 2, 2004 general election? (NOTE: Please **do not** include Federal Write-In Absentee Ballots as question 6 asks for information about these ballots.)

Question 3. Of the total number of absentee ballots distributed to or returned by military and overseas citizens, how many were transmitted or returned by (a) mail, (b) facsimile, and (c) e-mail?

Question 4. Of the total number of absentee ballots returned by military and overseas citizens, how many were actually counted by your State for the November 2, 2004 general election?

Question 5. Of those military and overseas citizen absentee ballots **not counted**, provide the number of ballots rejected due to the fact that the ballot (a) lacked a postmark, (b) lacked the voter's signature, (c) contained no verifiable signature, (d) had no date of signature, (e) had no notary or witness signature, (f) had no date of notary or witness signature, (g) was received after the state deadline, (h) was returned as undeliverable, or (i) was rejected for another reason. (Use "N/A" if not the category of rejection is not applicable to your state)

Please provide additional clarifying information for any ballots itemized under "other" for Question 5.

Question 6. How many Federal Write-In Absentee Ballots (FWAB) did your jurisdiction receive from absent uniformed services and overseas voters for the November 2, 2004 general election?

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JURISDICTIONS RESPONDING

Question 7. Please indicate here the total number of your local jurisdictions and then the number that reported.

TOTAL NUMBER OF LOCAL JURISDICTIONS	TOTAL NUMBER OF JURISDICTIONS REPORTING

If data are missing because some jurisdictions failed to report or for some other reason, please explain any other reasons for missing data below.

Question 8. Provide the name and contact information for each local election official that provided information for the purpose of responding to this survey. (Please respond on the attached spreadsheet.)

Instructions:

Please answer every question. Do not leave any questions blank. If your state does not collect a specific piece of data requested or data is unavailable for some other reason, please signify by placing N/A in the blank and noting the reason that data was not provided. This survey seeks information on both a State and local election jurisdiction level. Please include both individual election jurisdiction data as well as aggregate data for the entire state in your responses.

Definitions:

"Advance Ballots" means any Special Write-In Absentee Ballot, State Write-In Absentee Ballot, Special Write-In Early Ballot or Blank Absentee Ballot that is distributed by a state in advance of the publication of an official ballot for a federal election on which military and overseas citizens are allows to write in the name of the candidate in each contest for whom they choose to vote.

"Domestic Military" encompasses
(A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned within the United States or its territories, and who is absent from the place of residence where the member is otherwise qualified to vote;
(B) a member of the merchant marine who, by reason of service in the merchant marine, is serving within the United States and its territories, and who is absent from the place of

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(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

" Overseas Military" include:
(A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote;
(B) a member of the merchant marine who, by reason of service in the merchant marine, is serving outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote; and
(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

"Overseas Citizens" are persons who are citizens of the United States who are living, working or stationed outside of the United States and its territories and who are not members of a uniformed service.

"Federal Write-In Absentee Ballot (FWAB)" is a ballot available to a military or overseas citizen when the absent uniformed services member or citizen outside the United States (including APO and FPO addresses) does not receive the regular absentee ballot from the state after having made a timely application for the ballot. The FWAB is used to vote for Federal offices (President/Vice President, U.S. Senator, U.S. Representative, Delegate or Resident Commissioner) in general elections.

A Federal write-in absentee ballot of an absent uniformed services voter or overseas voter shall *not* be counted. —

(1) in the case of a ballot submitted by an overseas voter who is not an absent uniformed services voter, if the ballot is submitted from any location in the United States;
(2) if the application of the absent uniformed services voters or overseas voter for a State absentee ballot is received by the appropriate State election official after the latter of—
    (A) the deadline of the State for receipt of such application; or
    (B) the date that is 30 days before the general election; or
(3) if a State absentee ballot of an absent uniformed services voters or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.

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UNITED STATES ELECTION ASSISTANCE COMMISSION

ELECTION DAY DATA SURVEY

The following form and its attachments should be completed on-line or in electronic format. Completed forms should be returned to the United States Election Assistance Commission via email to surveyresponse@eac.gov on or before the sixtieth day following the federal election.

Please complete all of the fields below. Specific instructions relative to certain fields are found at the end of this form. If your question or concern is not answered in the instructions section of this form, please contact Brian Hancock at 202-566-3100.

RESPONDANT INFORMATION:		
Name of the responding State:	Date response is submitted:	
Name of responding official:	Title of responding official:	
Address of responding official:	Email Address:	
	Phone Number:	Fax Number:
VOTER REGISTRATION: **Please respond to the following questions on the attached spreadsheet or in similar format that can be imported to a spreadsheet or database file such as a comma separated values (.csv) format.**		
1a. Total number of registered voters (active) by county/local election jurisdiction	1b. Total number of registered voters (inactive) by county/local election jurisdiction	
ELECTION RESULTS: **Please respond to the following questions on the attached spreadsheet or in similar format that can be imported to a spreadsheet or database file such as a comma separated values (.csv) format.**		
2a. Total number of ballots counted state-wide	2b. Total number of ballots counted by county/local election jurisdiction	
3a. Total number of ballots cast in polling places (state-wide) on election day (for Oregon – by mail)	3b. Total number of ballots cast on election day by county/local election jurisdiction	
4a. Total number of requested absentee ballots	4b. Total number of requested absentee ballots by county/local election jurisdiction	
5a. Total number of absentee ballots returned	5b. Total number of absentee ballots returned by county/local election jurisdiction	

6a. Total number of absentee ballots counted	6b. Total number of absentee ballots counted by county/local election jurisdiction
6c. Total number of absentee ballots that were not counted	6d. Identify the five most common reasons that absentee ballots were rejected
7a. Does your state conduct early voting?	7b. Total number of early voting ballots counted
7c. Total number of early voting ballots counted by county/local election jurisdiction	
8a. Total number of provisional ballots cast	8b. Total number of provisional ballots cast by county/local election jurisdiction
9a. Total number of provisional ballots counted	9b. Total number of provisional ballots counted by county/local election jurisdiction
9c. Identify the five most common reasons that provisional ballots were rejected	
10. Total number of undervotes reported in each federal contest by county/local election jurisdiction	11. Total number of overvotes reported in each federal contest by county/local election jurisdiction
12. Total number of votes cast for all candidates in each federal contest by county/local election jurisdiction	
VOTING EQUIPMENT: **Please respond to the following questions by attaching a file in any of the following formats: .doc, .txt, or .csv.**	
13. Provide a listing of the types of voting equipment in use in each county of the State including the type of voting system, manufacturer, number of units used in each county/local election jurisdiction, the software version (if applicable), and an indication as to whether the voting system has or has not previously been used in a Federal election in that jurisdiction.	
14. Identify by county and precinct, if available, where any of the following voting machine malfunctions occurred. Please identify if the voting machine was returned to service in the November 2, 2004 election.	
14a. Power failure	14b. Broken counter
14c. Computer failure	14d. Printer failure
14e. Screen failure	14f. Fatal damage to machine
14g. Modem failure	14h. Scanner failure
14i. Ballot encoder/activator failure	14j. Audio ballot failure
14k. Other (please specify)	
POLL WORKERS: **Please respond to the following questions on the attached spreadsheet or in a similar format that can be imported to a spreadsheet or database file such as a comma separated values (.csv) format.**	
15a. Total number of poll workers who served in the State on November 2, 2004	15b. Total number of poll workers who served in each county/local election jurisdiction on November 2, 2004
16. What is the required number of poll workers per precinct/polling place as established by law or regulation?	
17a. By county/local election jurisdiction, how many precincts/polling places did not have the required number of poll workers?	17b. In any county/local election jurisdiction where a deficit of poll workers existed, identify the number of additional poll workers needed to meet the requirement.

VOTING JURISDICTIONS: Please respond to the following questions on the attached spreadsheet or in a similar format that can be imported to a spreadsheet or database file such as a comma separated values (.csv) format.	
18. Identify what constitutes a local election jurisdiction in your State (e.g. county, parish, township, city).	
19. Total number of precincts by county/local election jurisdiction	
20. Total number of polling places by county/local election jurisdiction	
21a. Total number of polling places by county/local election jurisdiction that can be accessed by a voter who uses a wheelchair	21b. Total number of polling places by county/local election jurisdiction where a visually impaired voter can cast a private ballot
21c. Total number of polling places where a physically disabled voter can cast a ballot on an accessible voting system.	
SOURCES OF INFORMATION: Please respond to the following questions by attaching a file in any of the following formats: .doc, .txt, or .csv.	
22. Total number of local election jurisdictions that provided information for purposes of responding to this survey	
23. Provide the name and contact information for each local election jurisdiction official that provided information for purposes of responding to this survey.	
24. Identify any other sources of information used to respond to this survey other than those provided in response to questions 22 and 23.	

Instructions:

Please answer every question. Do not leave any questions blank. The appropriate answer may be "0", "none", or "N/A". This survey seeks information on both a State and local election jurisdiction level.

A spreadsheet has been attached for your convenience in responding to the majority of the questions, above. However, States may provide the same information in a similar format through any .csv formatted file. Please add additional columns where necessary to report additional Congressional or Senatorial district information and to accommodate all counties/local election jurisdictions in the State.

Definitions:

The following are specific instructions and definitions for your use in completing the numbered questions in the form, above:

1. Provide by county/local jurisdiction, only, the number of registered voters. If your state differentiates between active and inactive voters, place each number in the respective column on the attached spreadsheet. If your state does not differentiate, place results in the "active" column.

2. The number provided in response to this question should include all ballots that were counted during election day, absentee, early voting or late counting for the November 2, 2004 election (e.g., paper, electronic, military, absentee, and provisional ballots)

3. The number provided in response to this question should include all ballots cast and counted during election day voting (at the polls). This number does not include the number of absentee or early voting ballots counted.

4a. – 6d. Absentee voting is defined as voting prior to election day which requires that the voter meet qualifications other than those generally required to register to vote. The numbers provided in response to questions 4a. – 6b. should not include ballots requested by military and overseas voters. The number should reflect only those non-military and overseas absentee ballots that were requested, returned, cast and counted, respectively.

6e. Identify the most common reasons for rejecting an absentee ballot. The response to this question can be provided in any electronic format.

7. "Early voting" is defined as any voting that occurred prior to November 2, 2004 for which there were no eligibility requirements. For example, the voter did not have to attest that he/she would be absent from the voting jurisdiction on the day of the election.

8. The number provided in response to this question should include the total number of ballots cast in the State's program for contingent or provisional ballots that complies with section 302(a) of the Help America Vote Act.

9a. The number provided in response to this question should include the total number of ballots identified in response to question 8 that were verified as having been cast by eligible voters and were counted in the November 2, 2004 election.

9b. The number provided in response to this question should include the total number of ballots identified in response to question 8 that were not verified as having been cast by eligible voters and which were not counted in the November 2, 2004 election.

9c. Identify the most common reasons for rejecting a provisional ballot. The response to this question can be provided in any electronic format.

10. An "undervote" occurs at any time when a voter makes less than that allowed number of selections in a single race/contest or when a voter votes on less than all of the races/contests for which he/she is eligible to vote.

11. An "overvote" occurs when a voter makes more than the permitted number of selections in a single race/contest or when a voter makes a selection in a race/contest on which he/she was not eligible to vote.

12. Report all votes cast for all candidates in the presidential, senatorial and congressional contests, respectively. If response to this question is made using the sample spreadsheet, columns must be added so that each senatorial and congressional contest is reported separately.

13. Respond to question 13 by identifying in an electronic document (.doc, .txt. or .csv format) the county and/or precinct, the type of voting system (i.e., punch card, lever, optical scan or direct record electronic (DRE)), the manufacturer of the equipment used, and the number of units in use in the county (and/or precinct, if available), the software version (if applicable) and an indication as to whether this technology was used in a Federal election in that jurisdiction prior to November 2, 2004.

14. The answer to this question should identify the location (county or precinct, if available) and number of occurrences of each type of machine malfunction that occurred on November 2, 2004 or during any absentee or early voting period for the November 2, 2004 election.

14a. "Power failure" means any interruption or failure of the power system of the voting system that would render the voting machine incapable of counting votes for more than 5 minutes during election day, absentee or early voting.

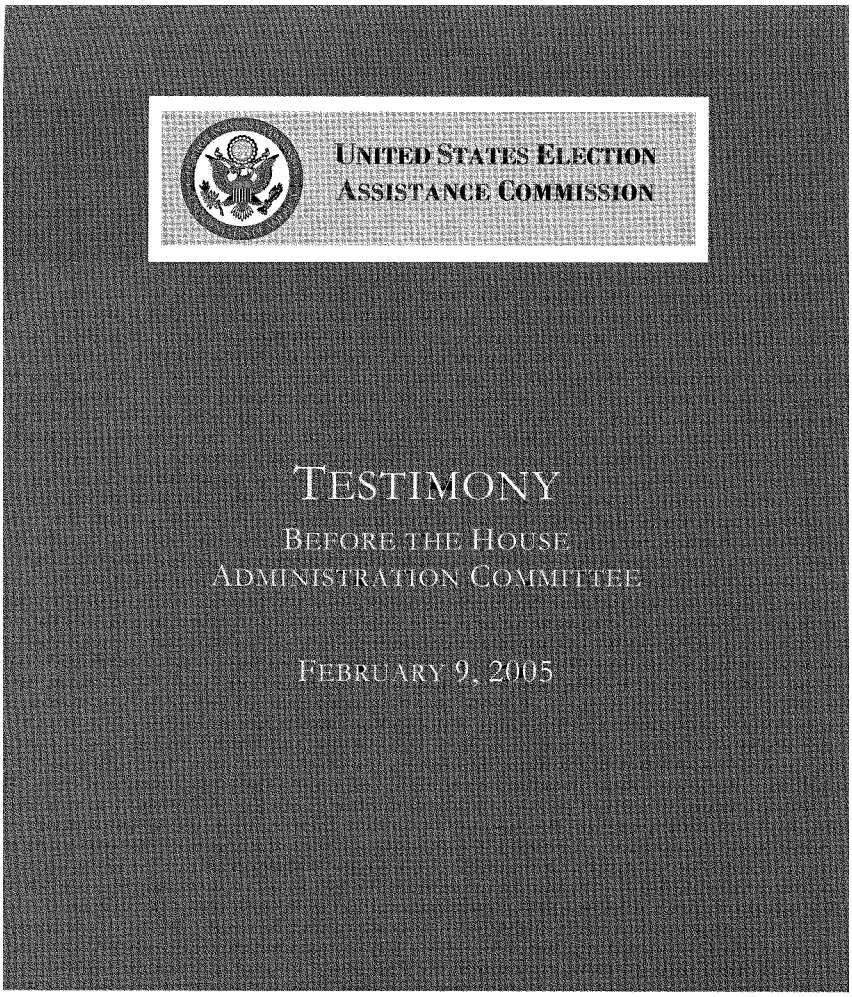
14b. "Broken counter" means with reference to a lever voting system the malfunction of the counting mechanism that renders the voting system incapable of counting additional votes on any votable position on the machine.

14c. "Computer failure" means any malfunction, disablement or interruption of the software, hardware or firmware that makes up the voting unit such that the unit is incapable of presenting the ballot, recording votes or printing and/or tabulating results.
14d. "Printer failure" means any malfunction or interruption of the printer hardware, software or mechanical components that constitute the mechanism for creating a printed result of all races voted on a single or on multiple voting machines. Printer failures shall include printers on both electronic and mechanical or lever voting machines.
14e. "Screen failure" means with reference to a DRE a malfunction or interruption of the screen display or indicator lights such that the DRE cannot accurately indicate to the voter which choices have been made or which races on which the voter is eligible to vote.
14f. "Fatal damage to a machine" means the damage or destruction of a voting machine that renders it incapable of functioning to record votes or print results of voting.
14g. "Modem failure" means the malfunction or interruption of modem or the computer hardware or software using the modem to transmit results to a central counting location such that the modem is rendered incapable of transmitting results.
14h. "Scanner failure" is the malfunction or interruption of a paper ballot reading device that renders it incapable of counting votes or renders the result tabulated by the reader inaccurate.
14i. "Ballot encoder/activator failure" with reference to a DRE means the malfunction or interruption of that piece of electronic equipment that encodes a smart card or other similar device with the voter's ballot or critical demographic data that allows the voting system to access the proper ballot for the individual voter.
14j. "Audio ballot failure" with reference to a DRE means any malfunction or interruption of the hardware, software or peripherals that renders the voting machine incapable of playing an audio version of the ballot.
14k. "Other" refers to any voting machine malfunction that does not fall within the categories established in 14a – 14i.
15. The answer to this question should include the number of persons who served in all polling places in the State as poll workers, election judges, wardens, commissioners or other similar term that refers to the person or persons who verify the identity of a voter; assist the voter with signing the register, affidavits or other documents required to cast a ballot; assist the voter by providing the voter with a ballot or setting up the voting machine for the voter; and serving other functions as dictated by state law. The answer to this question shall include the head poll worker for each precinct. The response to this question shall not include observers stationed at the polling place.
16. In responding to this question, please provide any prescribed minimum number of poll workers needed to serve in a precinct/polling place on election day.
17. In response to this question, the State shall identify the county and precinct, if available, where less than a full complement of poll workers was present on election day and the number of poll workers that it was short by county or local election jurisdiction.
18. Identify in any electronic format what constitutes a local election jurisdiction in your State (e.g., county, parish, township, city)
19. "Precinct" is that geographic area to which voters are assigned.
20. "Polling place" is that physical structure where residents of a precinct go to cast their votes on election day. A polling place includes any structure that houses one or more precincts.
21a. Identify the total number of polling places that are accessible to persons using wheelchairs.
21b. Identify the total number of polling places where voting equipment is used such that a visually disabled voter can cast a private ballot (e.g., a DRE with audio ballot capability or paper ballots printed in Braille).
21c. Identify the total number of polling places where voting equipment is used that is accessible to a physically disabled voter (e.g., a touch screen DRE which can be handed to the

voter, a voting machine which can be lowered to allow access to voter using a wheelchair, other paper ballots or voting systems that are accessible to voters with physical disabilities).

23. In response to this question, the State shall identify name, address, phone number and email address (if available) of the local election officials or jurisdictions responsible for conducting elections in a specified geographic area that have provided data to assist the State in responding to this survey.

24. All other sources of data shall include information obtained from a state-wide voter registration database or any other public or non-public source.



U.S. Election Assistance Commission
1225 New York Ave., NW – Suite 1100
Washington, DC 20005

Good morning Mr. Chairman and Members of the Committee. Seated before you today are the four members of the U.S. Election Assistance Commission (EAC): Gracia Hillman, Chair; Paul DeGregorio, Vice Chairman; Ray Martinez, III; and DeForest B. Soaries, Jr. Our biographies are attached to this statement. (Appendix 1)

We are pleased to be here this morning to discuss our conclusions about the November 2004 election and the role that the Help America Vote Act of 2002 (HAVA) played in that election. In our testimony, we will review the progress and accomplishments of HAVA leading up to the November 2004 Election and our plans to continue the implementation of HAVA in 2005.

HAVA marks the first Federal program of its kind in the history of voting in this country. HAVA's changes to the voting process in Federal elections are substantial. Although the EAC has been engaged in this election reform effort for only just over a year, we will endeavor in our comments today to inform you of the successes, the frustrations and the work that is left to be done under HAVA.

We appreciate the vested interest that this Committee has in our work. We recognize the importance of what you have done for America as the authorizers of HAVA and look forward to today's discussions.

INTRODUCTION

In October 2002, Congress, with the leadership and overwhelming support of the members of this Committee, passed the Help America Vote Act (HAVA). HAVA represents an unprecedented effort by Congress to enhance the administration of Federal elections through funding, guidance and policies. Previously, this country has relied exclusively on the resources and efforts of the States to conduct Federal elections without assistance and direction from the Federal Government. HAVA recognizes the important role of the States in conducting Federal elections while at the same time providing funding and guidance to the States in a nation-wide effort to make the administration of Federal elections more uniform and consistent.

HAVA was not contemplated as a short-term or partial solution to the issues and problems with the administration of Federal elections that came to the forefront during the 2000 Presidential Election. Rather, HAVA sets out a comprehensive program of funding, guidance, and ongoing research that spans the course of many years. HAVA's primary funding program (Title II) was authorized for three consecutive fiscal years (through 2005). Congress recognized that election reform efforts would go on beyond the 3-year authorization of funds. Therefore, Congress did not apply a fiscal year restriction on the use of the Title II funds. Likewise, HAVA created a Federal commission, the Election Assistance Commission[1], which it authorized initially for a period of three fiscal years. HAVA also contemplated the creation and maintenance of

[1] EAC Organizational Chart is attached as Appendix 2.

Federal guidance on voting systems, provisional voting, voter identification, voter registration databases, and voter information. Congress knew that these important policies and guidance not only would take some time to develop, but also, due to the nature of ever evolving technologies and voting processes, would need revision and updating in keeping with those changes.

Many of the HAVA implementation efforts began in earnest in January 2004 immediately following the formation and appointment of the Election Assistance Commission. To their great credit, States used the limited Federal resources distributed by the General Services Administration (GSA) under Title I and their own state funding to implement those HAVA requirements with deadlines of January 1, 2004, including provisional voting and voter information. But, to put the proper context on HAVA implementation, it is, at best, just crossing into the second year of its multi-year election reform scheme.

All of this having been stated, HAVA has already proven to be a success in revamping the voting process in Federal elections. Provisional voting offered over one million voters the opportunity to cast a ballot in Federal elections in 2004. Prior to HAVA, these persons would have been turned away. HAVA funding has already permitted some States to upgrade their voting systems to comply with HAVA. Other States have used HAVA funds to implement or improve their state-wide voter registration databases to manage voter lists and prevent the fraud that has surrounded voter registrations in the past. These are just a few of the success stories of HAVA that will be discussed more fully below.

The House Administration Committee will hear, if it has not already, from detractors that say that HAVA has not lived up to its billing and has failed to meet their expectations of election reform. In one respect, they are correct. To the extent that HAVA implementation is not complete, we cannot yet realize the totality of its intended benefits and reforms. Furthermore, the States have expressed understandable frustration with trying to meet HAVA requirements within the prescribed deadlines. To address these concerns, the Election Assistance Commission has taken an aggressive approach to its work in 2004 and will continue that pace and determination in 2005 to assist the States in their implementation of HAVA. With the much needed funding that the Election Assistance Commission received in its 2005 budget, EAC is embarking upon an accelerated research agenda to develop and publish guidance on voting systems, provisional voting, voter registration databases, and voter identification. Some of this work is already well underway. For example, the Technical Guidelines Development Committee (TGDC) met on January 18 and 19 to pass resolutions tasking the National Institute for Standards and Technology (NIST) with developing voluntary voting system guidelines. In December 2004, EAC received testimony regarding voter registration databases and has scheduled an initial hearing on the issue of provisional voting on February 23, 2005. However, there is a great deal of work to be done to fully implement HAVA and all of its intended election administration reforms.

HAVA SUCCESSES IN 2004

The beginnings of HAVA's significant influence could be felt throughout the country in 2004. States implemented the Title III requirements for provisional voting, voter information and voter identification by January 1, 2004 and used these new principles in their Federal elections in 2004. As with any new statute and new requirements, there were varying interpretations of these mandates and substantial media and public attention to the legal battles that ensued. The results of the first Federal elections conducted under HAVA were a populace that was more engaged in the political process, a surge in voter registration, an opportunity for voters who would previously have been turned away to vote provisionally, an unprecedented amount of information available to voters regarding the voting process and their voting rights, improving voting technology, and the promise of more reform and reflection on the voting process to come in the following years. There can be no question that HAVA positively influenced the 2004 elections.

Federal Funding Programs

Prior to the enactment of HAVA, Federal funds had not been committed to the improvement of the administration of Federal elections. Other Federal legislation was enacted to impose limitations and requirements on the administration of elections, but never before had those expectations been backed by Federal funding. Congress has appropriated over $3,000,000,000 to help States meet the requirements of HAVA and improve the administration of Federal elections. Other HAVA programs such as the College Poll Worker program, the National Parent-Student Mock election, and the program to assure access for individuals with disabilities have been funded by Congress in the amounts of $950,000, $400,000, and $33,000,000, respectively.

EAC, GSA, and HHS have distributed a total of $2,213,847,325 to the States, the District of Columbia and the Territories since the enactment of HAVA. The following table shows the amounts that have been distributed to each of the States and Territories for their use to implement the provisions of HAVA.

	Title I "Early Money"		Title II Requirements Payments (Section 251)		Title II Disability Access Grants (Section 261)		
State	Section 101 Payments*	Section 102 Payments*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Total Disbursed to State**
AL	$4,990	$51	$12,835	$23,031	$185	$130	$41,222
AK	$5,000	$0	$0	$0	$100	$100	$5,200
AS	$1,000	$0	$830	$1,489	$100	$100	$3,519
AZ	$5,451	$1,564	$14,523	$26,061	$210	$153	$47,962
AR	$3,593	$2,570	$7,729	$13,869	$109	$100	$27,970
CA	$27,341	$57,322	$94,559	$0	$1,372	$986	$181,580
CO	$4,860	$2,177	$12,362	$22,183	$178	$129	$41,889

State	Title I "Early Money"		Title II Requirements Payments (Section 251)		Title II Disability Access Grants (Section 261)		Total Disbursed to State**
	Section 101 Payments*	Section 102 Payments*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	
CT	$5,000	$0	$9,920	$17,780	$143	$100	$32,943
DE	$5,000	$0	$4,150	$0	$100	$100	$9,350
DC	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
FL	$14,448	$11,581	$47,417	$85,085	$687	$493	$159,711
GA	$7,816	$4,740	$23,171	$41,578	$335	$242	$77,882
GU	$1,000	$0	$0	$0	$100	$100	$1,200
HI	$5,000	$0	$4,150	$0	$100	$100	$9,350
ID	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
IL	$11,129	$33,806	$0	$0	$511	$359	$45,805
IN	$6,230	$9,522	$17,372	$31,173	$251	$175	$64,723
IA	$5,000	$0	$8,495	$15,244	$122	$100	$28,961
KS	$5,000	$0	$7,662	$13,748	$110	$100	$26,620
KY	$4,699	$469	$11,773	$21,126	$170	$121	$38,358
LA	$4,911	$7,352	$12,549	$22,518	$181	$127	$47,638
ME	$5,000	$0	$4,150	$0	$100	$100	$9,350
MD	$5,637	$1,638	$15,201	$27,277	$220	$157	$50,130
MA	$6,590	$1,519	$18,688	$33,534	$270	$191	$60,792
MI	$9,207	$6,531	$28,257	$0	$409	$287	$44,691
MN	$5,314	$0	$14,020	$25,158	$202	$145	$44,839
MS	$3,673	$1,778	$8,023	$14,396	$115	$100	$28,085
MO	$5,875	$11,473	$16,073	$28,842	$232	$164	$62,659
MT	$5,000	$0	$4,150	$0	$100	$100	$9,350
NE	$5,000	$0	$4,920	$0	$100	$100	$10,120
NV	$5,000	$0	$5,785	$10,381	$100	$100	$21,366
NH	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
NJ	$8,141	$8,696	$24,358	$0	$352	$248	$41,795
NM	$5,000	$0	$5,110	$9,170	$100	$100	$19,480
NY	$16,494	$49,604	$0	$0	$796	$559	$67,453
NC	$7,888	$893	$23,431	$42,046	$339	$240	$74,837
ND	$5,000	$0	$4,150	$0	$100	$100	$9,350
OH	$10,385	$30,668	$32,562	$58,430	$143	$328	$132,516
OK	$5,000	$0	$0	$0	$472	$101	$5,573
OR	$4,204	$1,823	$9,962	$0	$143	$102	$16,234
PA	$11,323	$22,917	$35,993	$64,586	$521	$364	$135,704
PR	$3,151	$0	$0	$0	$151	$104	$3,406
RI	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
SC	$4,652	$2,168	$11,602	$20,819	$167	$120	$39,528
SD	$5,000	$0	$0	$0	$100	$100	$5,200
TN	$6,005	$2,474	$16,546	$29,690	$241	$169	$55,125
TX	$17,207	$6,270	$57,505	$0	$834	$602	$82,418
UT	$3,091	$5,727	$5,893	$10,574	$100	$100	$25,485

State	Title I "Early Money"		Title II Requirements Payments (Section 251)		Title II Disability Access Grants (Section 261)		Total Disbursed to State**
	Section 101 Payments*	Section 102 Payments*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	
VT	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
VA	$7,106	$4,527	$20,573	$0	$298	$212	$32,716
VI	$1,000	$0	$0	$0	$100	$100	$1,200
WA	$6,098	$6,799	$16,889	$30,307	$244	$175	$60,512
WV	$2,977	$2,349	$5,476	$9,827	$100	$100	$20,829
WI	$5,694	$1,309	$15,411	$27,653	$185	$158	$50,410
WY	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
Total	$349,180	$300,317	$719,125	$822,257	$12,998	$9,941	$2,213,818

* Figures rounded to nearest thousand.

** Excludes payments made under section 291 by the U.S. Department of Health and Human Services to States for protection and advocacy systems.

As can be seen from the Table above, all States, Territories and the District of Columbia have received Title I, Section 101 funds for use in improving the administration of Federal elections. Thirty States received Section 102 for replacing punch card and lever voting systems. Thirty-five States have requested and received all of the Title II funds available to the State under HAVA. Twenty States have received no or partial Title II funding and have the opportunity to receive additional funds upon providing the certification required by HAVA and requesting those funds.

HAVA funds have already enhanced the election process, touching various aspects of the election administration process. This money has been used by States to develop their state plans detailing how they would comply with HAVA; to develop their administrative complaint procedures; to institute provisional voting; to recruit, educate and train poll workers; and to inform voters of the changes in the voting process. Probably the most tangible effect of HAVA dollars for voters was the use of HAVA funds to improve voting technology.

Voting System Procurement

In States like Georgia, Maryland, Florida and the District of Columbia, voters in the November 2004 election used new electronic or optical scan voting equipment funded by HAVA. Nevada spent a portion of its HAVA funds not only to upgrade voting equipment to touch screen voting systems but also to outfit its voting units state-wide with devices that would produce a contemporaneous paper record of the votes cast on each voting machine. EAC research, as well as reports by other sources such as media, trade associations, and non-governmental research agencies, shows that five of the States have used HAVA money to either fund or reimburse state-wide purchase and implementation of updated voting equipment to meet the requirements of Title III. Many more are in the process of issuing Requests for Proposals (RFP) or other solicitation methods for the procurement of updated voting equipment. The

States are well underway with their efforts to purchase HAVA compliant voting systems to meet the 2006 deadlines.

State	Voting System Procurement Status as of 1/24/05
AL	No procurement status reported
AK	Procurement complete
AS	No procurement status reported
AZ	RFP to be issued February 2005
AR	RFP to be issued March 2005
CA	Feasibility study completed; RFP to follow
CO	RFP being prepared for issue
CT	RFP issued; Due February 2005
DE	Procurement complete
DC	Procurement complete
FL	Procurement in process
GA	Procurement complete
GU	No procurement status reported
HI	Procurement planned for June 2005
ID	RFP to be issued March 2005
IL	Awaiting decision on whether to issue RFP or provide a list of certified equipment from which the counties can purchase
IN	No statewide procurement. Counties will purchase state certified machines.
IA	Procurement planned for 2005
KS	RFP to be issued March 2005
KY	A qualified vendor list has been established; counties will purchase from that list
LA	RFP to be issued March 2005
ME	RFP to be issued by Summer 2005
MD	Procurement complete
MA	Cities will purchase voting equipment approved by the State
MI	Michigan communities are in the process of purchasing optical scan systems from a qualified vendors list established and contracts negotiated by the Secretary of State
MN	Awaiting legislation to develop a procurement process or strategy
MS	RFP issued
MO	New Secretary of State is considering various options for procurement
MT	No procurement status reported
NE	Awaiting budget finalization to determine a procurement strategy
NV	Procurement complete
NH	No procurement status reported
NJ	No procurement status reported
NM	Awaiting legislation to determine procurement strategy
NY	Awaiting legislation to determine procurement strategy
NC	RFP to be issued spring 2005
ND	RFP complete; Contract signed; Certification due March 2005
OH	Change to purchase of optical scan equipment versus DREs
OK	Procurement complete
OR	RFP to be issued summer 2005
PA	Pennsylvania counties will purchase from a list of voting systems certified by the state.
PR	Awaiting action by the legislature to identify procurement process
RI	No procurement status reported
SC	RFP complete; Procurement planned for 2005

State	Voting System Procurement Status as of 1/24/05
SD	Procurement planned for Spring 2005
TN	Pending decision on procurement process
TX	Negotiating contracts with approved vendors from which counties will select and purchase their voting equipment.
UT	Utah has received responses to its RFP. With the change in administration we are awaiting direction as to how to proceed with the procurement process.
VT	Procurement planned for Spring 2005
VI	No procurement status reported
VA	RFP issued in 2004
WA	RFP issued; RPF withdrawn due to inadequate response
WV	Considering procurement options
WI	No procurement status reported
WY	Procurement planned using negotiated contracts

HAVA funds further influenced the 2004 election through the development and use of state-wide voter registration databases in 17 States. Twenty-one other States have entered into agreements for the development of a database and that process is ongoing. Nine others have RFPs pending, but have not made final decisions on those proposals.[2]

Initial reports from the States regarding the use of Title II funds and expenditure of Title I funds since January 1, 2004 are expected to be received from the States on or before March 31, 2005 and will further inform EAC of the States' uses of HAVA funds. HAVA funds have influenced the administration of Federal elections and will continue to have a positive effect as States spend those funds to acquire voting machines, implement databases, train poll workers, and educate and inform the public about the beneficial changes involving Federal elections.

Provisional Voting

Provisional voting was a response to the number of persons who believed that they were registered to vote in 2000 but who were turned away from the polling places when their names did not appear on the poll lists. Provisional voting was not a new concept to all States. Some, such as California and New Mexico, have been administering some form of provisional voting for many years. As with most of the provisions of HAVA, the details of the implementation and many of the interpretations have been left to the States. Understandably, this resulted in various positions on what HAVA meant by "jurisdiction" and how provisional voting should be implemented. This lack of uniformity in implementation strategy is what caused provisional voting to be such a lightening rod in the 2004 elections. Despite the attention, both positive and negative, that was given to provisional voting, overall it can be seen as one of the great successes of HAVA.

To understand the impact of provisional voting, one must first recognize the climate in which it was introduced. Voter registration increased significantly in 2004. On the average,

[2] Electionline.org Briefing: The 2004 Election (December 2004), p 12.

voter registration was up approximately 9% since the November 2000 election. Many of these registrations came late in the cycle and close to the deadlines for submitting voter registration applications. These voluminous registrations at the end of the cycle taxed local election officials in their efforts to ensure that all eligible voters' names appeared on the precinct lists. The solution to that problem, envisioned by the framers of HAVA, was provisional voting. Even if those names were not entered in time to appear on the voter registration list, those persons would be able to vote by provisional ballot and have their eligibility verified after the election. In the November 2004 election more than 1,500,000 voters took advantage of the opportunity to cast a provisional ballot. More than 1,000,000 (68.4%) of those provisional ballots were counted. In simplest terms, more than 1,000,000 eligible voters voted in November 2004 who would have been disenfranchised were it not for HAVA.

The percentage of ballots that were counted varied from State to State. The following table shows available data regarding the number of provisional ballots cast and counted:

State	Total Provisional Ballots Cast	Total Provisional Ballots Counted	% Provisional Ballots Counted
Alabama	6,478	1,865	28.8%
Alaska	23,285	22,498	96.6%
Arizona	101,536	73,658	72.5%
Arkansas	7,675	3,678	47.9%
California	668,408	491,765	73.6%
Colorado	51,529	39,086	75.9%
Connecticut	1,573	498	31.7%
Delaware	384	24	6.3%
District of Columbia	11,212	7,977	71.15%
Florida	27,742	10,007	36.1%
Georgia	12,893	4,489	34.8%
Hawaii	347	24	6.9%
Idaho			
Illinois	43,137	17,000	39.4%
Indiana	1,287	175	13.6%
Iowa	15,406	8,038	52.17%
Kansas			
Kentucky	1,499	221	14.7%
Louisiana	5,880	2,312	39.3%
Maine			
Maryland	48,936	31,860	65.1%
Massachusetts	10,060	2,319	23.1%
Michigan			
Minnesota			
Mississippi			
Missouri	2,203	519	23.6%
Montana	688	378	54.9%
Nebraska	17,421	13,788	79.1%

State	Total Provisional Ballots Cast	Total Provisional Ballots Counted	% Provisional Ballots Counted
Nevada	6,153	2,446	39.8%
New Hampshire			
New Jersey			
New Mexico	5,246	2,728	52.0%
New York			
North Carolina	77,469	50,370	65.0%
North Dakota			
Ohio	157,714	123,912	78.6%
Oklahoma	2,615	201	7.7%
Oregon	8,298	7,077	85.3%
Pennsylvania			
Rhode Island			
South Carolina	4,930	3,207	65.1%
South Dakota	533	66	12.4%
Tennessee	8,778	3,298	37.6%
Texas	25,743	5,662	22.0%
Utah	26,389	18,575	70.4%
Vermont	121	30	24.8%
Virginia	4.127	728	17.6%
Washington	86,239	69,273	80.3%
West Virginia	13,367	8,378	62.7%
Wisconsin	374	119	31.8%
Wyoming	95	24	25.3%
American Samoa			
Guam			
Puerto Rico	14,706		
Virgin Islands	254	197	77.6%
TOTAL U.S.	1,502,730	1,028,470	68.4%

In Alaska, 22,498 of the 23,285 (96.6%) provisional ballots were counted. Conversely, in Hawaii, only 24 of the 347 (6.9%) provisional ballots were counted. The variance in the percentage of ballots counted from State to State is reflective of a number of factors, including the definition of "jurisdiction" for purposes of provisional voting as well as the facts surrounding the individual provisional ballot applications, such as whether the person submitted a timely voter registration application.

It was the diverging definitions of "jurisdiction" that drew national attention. Litigation over provisional voting occurred in at least five States, including most notably Ohio, Michigan, and Missouri. While this may seem like negative and unwanted attention, the reality is that these lawsuits produced a reasonable, workable rule of law regarding provisional voting. The Sixth Circuit Court of Appeals was the highest court to consider issues related to provisional ballots in *The Sandusky County Democratic Party, et al. v. J. Kenneth Blackwell,* 387 F.3d 565 (6th Cir. 2004). Each case considered several common questions: 1) is there a private right of action

under HAVA, 2) who is eligible to receive a provisional ballot, and 3) when should a provisional ballot be legally counted? In each case, including the opinion of the Sixth Circuit, the courts found that there is a private right of action under HAVA using the provisions of 42 U.S.C. § 1983. Second, the opinions resolved that HAVA dictates the availability of provisional ballots. A person is entitled to receive a provisional ballot when his/her name does not appear on the voter registration list, regardless of whether the person is attempting to vote in the precinct to which he should be assigned by virtue of his address. Third, a provisional ballot should be counted when it meets the laws, rules or regulations for such counting established by the state. Thus, if state law or regulation has defined the jurisdiction for counting provisional ballots to be the "precinct," then a voter's provisional ballot will only be counted if he/she casts that provisional ballot in the proper precinct. These decisions preserve the intent of HAVA to work with the States, allowing them to implement HAVA in light of the various State laws and rules governing elections and allowing them to continue practices such as precinct-based voting that they have followed for years.

At the end of the November 2004 election, provisional voting was successful in allowing eligible voters to participate in the electoral process. It allowed eligible voters to cast ballots when they previously would have been turned away. Furthermore, it is better refined and understood thanks to the interpretations of HAVA by the courts of this country.

Voter Information

Section 302(b) of HAVA requires each polling place to display informational posters and sample ballots. These posters must include information regarding:

- the date and hours of the election
- instructions on how to vote
- special instructions for first time voters and voters who registered by mail
- general information regarding voting rights and state and Federal laws prohibiting fraud and misrepresentations in elections.

States were required to implement the use of these pieces of voter information as of January 1, 2004.

For the first time in 2004, voters could anticipate the type of information that would be made available to them at the polling places. They could expect not only to have a sample ballot with the names and offices of the candidates, but also information on how to vote using the voting equipment in place in that precinct. Persons who were first time voters or who registered by mail were given information on the types of identification that were accepted to verify the voter's identity. Further, if a voter experienced a problem in voting, the informational posters identified their voting rights, the laws that governed fraud and misrepresentation, and how to contact appropriate election officials if the voter felt his/her rights had been violated.

An example of the types of information displayed in our nation's voting precincts was provided by the State of Pennsylvania and is attached. (Appendix 3) Similar posters and pamphlets were developed by all of the States. These informational pieces were printed in dozens of languages so that persons whose primary language is not English could understand them. In addition, accommodations were made for sight impaired voters by printing these pamphlets in Braille and in some cases by making an audio recording of the text. It is evident from a review of these documents that where these posters were properly displayed, voters were more informed about their franchise and how to exercise it.

Administrative Complaint Procedures

HAVA required States to establish an administrative complaint procedure that allows voters to report and file complaints regarding voting and violations of HAVA. Most States developed these complaint procedures as a part of their state plans. The procedures must include a process whereby voters make complaints that are notarized for validity, have the opportunity to request and have a hearing of the complaint, and can expect a resolution to the complaint within 90 days of the date of filing. If resolution cannot be reached, the complaint must be referred to a process of alternative dispute resolution and completed within 60 days.

While some States previously had some type of formal or informal dispute resolution regarding election complaints, HAVA created the requirement for a uniform procedure that would cause voter complaints to be taken seriously and resolved in a timely manner. These administrative complaint procedures were not specifically designed to adjudicate complaints of fraud or ill practice, but this forum will undoubtedly shed light on past and future frauds on the election system and will hopefully prevent these acts from being ignored. At the time of this hearing, the 90-day period for resolution of early-filed complaints is just ending. Now that the hearing phase has ended, EAC will collect data regarding the number, types and resolutions to administrative complaints that were filed under this procedure.

Election Day Surveys

HAVA funding and the establishment of EAC has given the Federal Government an opportunity to collect and study a wide range of data related to the November 2004 election. EAC's research agenda contains three survey pieces: the Election Day Survey, the Military and Overseas Absentee Ballot Survey, and a revised National Voter Registration Act (NVRA) Survey. These survey instruments collect data on both a county and state level regarding a litany of voting administration issues, including:

Ballots Cast and Counted

- the number of ballots cast and counted
- the number of absentee ballots requested and counted
- the reasons that absentee ballots were rejected
- the number of provisional ballots cast and counted

- the reasons that provisional ballots were rejected

Voting Systems

- the number and types of voting equipment
- the number and types of voting machine malfunctions that occurred

Military Voting

- the number of military and overseas voters who requested ballots
- the number of military and overseas voters who cast and returned ballots
- the method of transmitting military and overseas ballots

Voter Registration

- the number of registered voters
- the number of voter registration applications received and processed
- the reasons for rejecting voter registration applications
- the form of voter registration applications accepted
- the means of storing voter registration data
- the number of voters who were removed under NVRA purging provisions
- the means of comparing voter registration applications to existing data to prevent duplicate and fraudulent registrations

Copies of the Election Day Survey and Military and Overseas Absentee Ballot Survey are attached. (Appendixes 4 and 5) The NVRA survey is in the final stages of development and has not yet been released to the States.

EAC has experienced a notable response to the Election Day Survey. Forty-one States have responded. EAC expects to receive an equal or greater response to its Military and Overseas Absentee Voter Survey, which was due on January 31, 2005. Once the final data from the NVRA survey is received by EAC (due March 31, 2005), EAC will compile a comprehensive report detailing the happenings of the November 2004 election as revealed by the survey data.

This information will in some cases serve as the basis on which we evaluate future elections and future election administration. Data from previous elections will further inform us of the improvements that have been achieved and the work yet to be done. Further, the data gathered through these surveys will be an invaluable addition to EAC's work as a clearinghouse of information to be shared among the States.

Poll Worker Recruitment Programs

Under Title V of HAVA, EAC developed the first Federal program to recruit and train poll workers. The HAVA College Poll Worker Program was designed to encourage students at institutions of higher education to assist local governments in the administration of elections by

serving as nonpartisan poll workers or assistants and to encourage local governments to use the services of students participating in the program. In fiscal year 2004, the HAVA College Program received $750,000 for the purpose of issuing grants to institutions of higher learning and associated organizations for use in the development of recruitment and training programs.

Following the announcement of the grant program, the Commission reached out to almost 40 organizations and associations, encouraging them to advertise the program within their networks. EAC staff fielded over 150 inquires from around the country, regarding the grant application process. Ultimately, 88 organizations applied for a HAVA college poll worker grant.

Because of the overwhelming interest in the program, EAC had to make tough choices as to which applicants would share in the available grant funds. An independent panel of 18 experts reviewed the eligible applications and gave each a score. EAC staff closely reviewed the top scorers and EAC ultimately chose 15 finalists. These 15 grantees shared the $630,000 of available grant funds. The 15 grants went to a variety of community colleges, four year colleges and universities, and non-profit organizations with a national and regional focus. A breakdown of the grant awards is shown in the table below.

Grantees	Location of Grantees	Amount Requested	Amount Awarded
Asnuntuck Community College	Enfield, CT	$91,344	$30,000
Assoc. Students, Inc. (Cal State Univ.)	Long Beach, CA	$41,912	$25,000
Eastern Michigan University	Ypsilanti, MI	$54,356	$25,000
Florida Memorial College	Miami Gardens, FL	$149,911	$50,000
Golden Key International Honor Society	Atlanta, GA	$148,250	$130,000
Illinois Central College	East Peoria, IL	$14,785	$12,000
Los Angeles Conservation Corps	Los Angeles, CA	$22,310	$20,000
Northampton Community College	Bethlehem, PA	$26,857	$25,000
Northern Kentucky University	Highland Heights, KY	$45,273	$25,000
Roxbury Community College	Boston, MA	$70,470	$30,000
Rural Ethnic Institute	Rapid City, SD	$149,537	$50,000
University of Baltimore	Baltimore, MD	$149,350	$70,000
University of Maryland College Park	College Park, MD	$67,270	$25,000

Grantees	Location of Grantees	Amount Requested	Amount Awarded
University of North Texas	Denton, TX	$149,280	$80,000
Wiley College	Marshall, TX	$31,978	$30,000
	Totals:	$1,212,883	$627,000

Combined, the 15 grantees estimated that over 5,300 students would be recruited into the poll worker program. Student recruitment goals were met. Over 5,300 students were recruited, 2,000 students were trained, and 1,700 students were recruited and placed as poll workers or poll assistants.

To further assist States and local election officials in recruiting poll workers, EAC launched a National Poll Worker Initiative in June 2004. EAC sought and gained the involvement of corporations, private organizations and private citizens in encouraging people to serve as poll workers on November 4. To further shed light on the need to recruit, train and retain poll workers, EAC used its September 2004 meeting to focus the attention of the country on the shortage of poll workers. EAC's efforts spurred corporations like CitiGroup and agencies like the Department of Agriculture to encourage their employees to participate in the electoral process as nonpartisan poll workers by adding that activity to its list of community involvements. In some cases, employers agreed to allow employees to serve as poll workers using approved, paid leave other than the employee's vacation.

These poll worker recruitment programs were first-time Federal initiatives. Never before had national attention been focused on the important work of those who serve democracy at the polling place or on the shortage of persons willing to help. The EAC poll workers recruitment programs were a beginning in an effort to assure that America's polling places are fully staffed with trained and knowledgeable poll workers. EAC continues to receive pledges of interest and assistance with its continued efforts to aid States and local jurisdictions in recruiting and training poll workers.

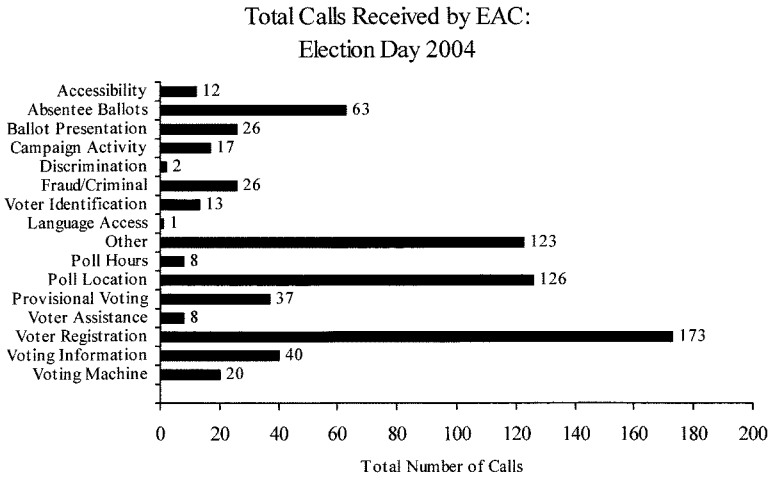
Election Day 2004 Findings

On Election Day 2004, the EAC Commissioners traveled to Florida, Ohio, California, New York, New Jersey, Illinois and Missouri to observe first-hand the events, successes and problems that occurred in the polling places of America. While the Commissioners saw many of HAVA's successes such as persons casting provisional ballots, they also witnessed poll workers who were not always so clear on when a provisional ballot should be offered to a voter. They saw polling places where informational signs were posted and polling places where the required signage was missing. They saw voters enjoying the benefits of upgraded and technologically advanced voting machines as well as voters who cast their ballots on machines that were decades

old. They saw polling places that operated with the utmost of efficiency and precincts where voters stood in line for hours to exercise their right to vote.

Even prior to Election Day, the EAC Commissioners were in touch with State and local election officials to discuss issues and concerns with the upcoming election. EAC, as a part of its clearinghouse role, hosted a telephone conference which gave election officials an opportunity to share problems and solutions that they experienced in preparing for the election. These calls revealed significant concerns about the administration of provisional voting and the ability of election officials to timely process the high volume of voter registrations.

While the Commissioners observed the November 2004 election in the field, the EAC office was manned by their trained staff to answer the calls of Americans who had questions about voting. Nearly 700 calls were fielded by the Election Assistance Commission staff from 6:00 a.m. until 10:30 p.m. on November 4, 2004. The vast majority of the calls involved questions regarding the location of a polling place, the hours of voting, and the status of voter registration. Conversely, relatively few calls involved allegations of improper activity.



BUILDING THE FRAMEWORK FOR EXCELLENCE IN 2005

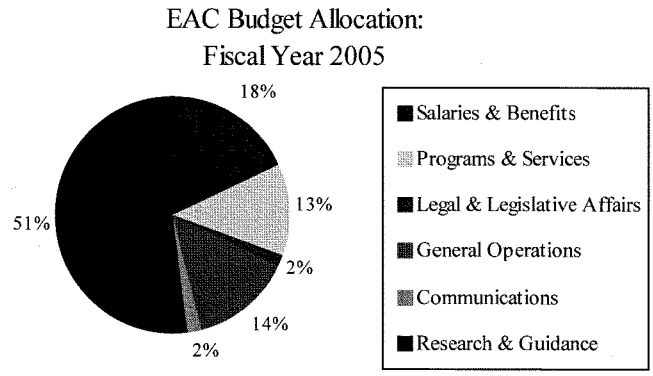
EAC's observations from the November 2004 election suggest that many things were done right, but there is much to be done. Parts of HAVA have been implemented, yet questions and confusion persist about these new voting practices. In the coming months, many States will purchase vast quantities of voting equipment using the funding provided by HAVA. Those States need guidance on which voting machines meet the requirements of HAVA and what the next generation of voting system standards will require. Likewise, state-wide voter registration lists will be implemented in the next 10 months and States need guidance on what constitutes a single, uniform, interactive voter list. Confusion over when and how to administer provisional voting must be eliminated. EAC's 2005 research and guidance agenda seeks to alleviate and respond to a lot of the uncertainty that surrounds HAVA implementation

EAC is committed to providing the guidance, assistance and information necessary to aid the states in their implementations of HAVA. EAC's priorities for 2005 are its research agenda and its efforts to assure that HAVA funds are spent properly and in keeping with the spirit of the law. EAC will inform the election reform process with its guidance and police the stewardship of HAVA funds.

EAC Research and Guidance Agenda for 2005

The Election Assistance Commission has set forth an aggressive research and guidance agenda for 2005. HAVA requires EAC to conduct a number of studies and allows the Commission considerable latitude to identify other election administration issues for review and research. The objective of these efforts is to provide information and guidance to election officials and others to promote the overall HAVA goal of improving the administration of U.S. Federal elections.

EAC's theme message for FY2004 was "Getting America Ready to Vote Under HAVA," to reflect the Commissions' formation and the initial actions taken to assist the States in meeting the HAVA requirements for the first Federal election after the passage of the Act. The Commission's theme for FY2005 is "Building the Framework for Excellence." Now that the first Federal elections have occurred under HAVA, we will be focusing our efforts on identifying what elements of HAVA worked well and where improvements might be needed. With the appropriation of its 2005 budget, EAC has received the money it needs to make a financial as well as a programmatic commitment to providing research and guidance to the States. EAC was able to allocate more than 50% of its 2005 budget to research and guidance efforts.



A key element of this research effort is the collection of data from States and counties on a number of election administration topics, including the use of provisional ballots, absentee voting, voter registration, voting equipment performance, and availability and training of poll workers. This data collection involves the use of three survey documents:

- Election Day Data Survey
- Military and Overseas Absentee Ballot Survey
- National Voter Registration Act Survey

This will be the first comprehensive data collection effort ever conducted and is expected to yield many useful insights regarding the current state of election administration. EAC will continue to refine its data collection effort in the coming years as a means to assess progress against HAVA's goals.

In addition, the Commission has identified a number of specific areas requiring research for the purpose of developing Title III guidance to the States, based principally on the experiences of the November 2004 election. This includes guidance on:

- Voluntary Voting Systems Standards
- Provisional Voting
- Impact of Voter Identification Requirements
- Voting Information

This work will involve review and analysis of State legislation and administrative procedures, identification of issues, and development of recommendations for application in the 2006 elections. In addition, EAC will conduct studies, as mandated by HAVA, regarding

- Free absentee ballot postage
- Electronic (internet) voting

Finally, EAC will review and update the National Voter Registration form and the instructions that accompany that form.

EAC's priority for informing and assisting the reform of elections is its guidance on voting systems and voter registration databases. Many States are directing major efforts this year to meeting the January 2006 deadline for implementation of state-wide voter registration databases and the replacement or upgrade of voting systems to meet HAVA requirements. The EAC will be issuing voter registration database guidance and expects to receive initial recommendations for voting system standards from the TGDC and NIST for use in the voting system procurements. Both of these efforts will be laying essential groundwork to build on for future technical assistance to the States.

Voluntary Voting System Guidelines

One of EAC's most important mandates is the testing, certification, decertification and recertification of voting system hardware and software. Fundamental to implementing this key function is the development of revised voluntary voting systems standards, which will prescribe the technical requirements for voting system performance, security, and auditability; and identify testing protocols to determine how well systems meet these requirements. Another important element is the certification of testing laboratories to ensure that competent resources are available to perform testing. The final element is the process of reviewing the system test reports to validate that systems have met the standards and therefore can be declared qualified for use in Federal elections. Each of these elements is discussed below.

Technical Guidelines Development Committee and the Standards Development Process

HAVA Section 221 calls for the establishment of a Technical Guidelines Development Committee (TGDC)[3] to assist the Commission in the development of voluntary voting system guidelines (also referred to as voluntary standards). These guidelines, or standards, are characterized as voluntary because EAC does not have the regulatory authority to issue

[3] The Chairman of the TGDC is the Director of the National Institute of Standards and Technology (NIST). The committee is comprised of the Director and fourteen other individuals appointed jointly by the Commission and the Director. HAVA Section 221 prescribes the composition of the TGDC membership to include members of the EAC Standards Board, members of the EAC Board of Advisors, members of the Architectural and Transportation Barrier Compliance Board, a representative of the American National Standards Institute, a representative of the Institute of Electrical and Electronics Engineers, two representatives of the National Association of State Election Directors, and other individuals with technical and scientific expertise relating to voting systems and voting equipment.

mandatory standards. Consequently, each State retains the prerogative of deciding whether to adopt these standards for the procurement of voting systems.

The first meeting of the TGDC was held on July 9, 2004. The focus of this meeting was getting the committee organized and defining working procedures. Commissioner Paul DeGregorio was named as the Federal Officer of the TGDC, as required by the Federal Advisory Committee Act. The members created three sub-committees: Computer Security and Transparency, Core Requirements and Testing, and Human Factors and Privacy. This meeting marked the beginning of TGDC's 9-month process for developing initial voting system guidelines.

Each of these sub-committees is responsible for developing high level resolutions or guiding principles regarding the scope and content of the voting system standards. These resolutions are then debated and finalized by the entire TGDC and, if approved, passed to NIST with tasking to conduct research, evaluate existing standards, or revise or write new standards as required to implement each resolution. The resulting NIST work product will be standards statements or a specification for a standard that needs to be developed, as well as a description of the test protocols for verifying compliance. The TGDC met again on January 18 and 19 and passed 31 resolutions guiding the development of voluntary voting system standards in the areas of security, core requirements and human factors. (Appendix 6)

The TGDC will deliver an initial set of voluntary voting system standards to EAC in April 2005 for consideration and adoption. The standards presented in April will be a start in developing a comprehensive approach to guidelines for voting systems and procedures for implementing the use of those voting systems. However, these standards will not be final. Additional standards work will be required not only to develop these comprehensive standards, but also to update those standards to keep pace with the ever-advancing technology.

Accreditation of Voting System Testing Laboratories

HAVA Section 231 requires EAC and NIST to develop a national program for accrediting voting system testing laboratories. On June 23, 2004, NIST published a notice in the Federal Register announcing the establishment of this program, which will be operated as part of the overall National Voluntary Laboratory Accreditation Program (NVLAP). This program will provide for initial accreditation of testing laboratories as well as periodic re-examination and re-certification that they continue to meet the criteria. NIST will begin accepting applications in April 2005. At this time, the test lab certification process will formally transition from the National Association of State Election Directors (NASED), which has been doing this work since 1992.

NVLAP provides an internationally-recognized, independent evaluation of laboratory competence. Labs wishing to receive accreditation will submit an application describing their facilities and staff qualifications in relation to the relevant standards. In this instance, NVLAP will be examining the applicant's ability to test systems using the voluntary voting system standards, based on their written documentation supplemented with a site visit to inspect their

facilities. Laboratories that successfully complete the accreditation process will be recommended by NIST to the EAC for designation as an approved voting system testing laboratory. EAC will maintain a register of qualified laboratories for vendors and election officials to reference in identifying resources to fulfill their system testing requirements.

Voting System Qualification Process

Accredited testing laboratories will test vendor systems for conformance with the voluntary voting system standards. Once this testing has been completed the results must be reviewed and a determination made of whether the system is eligible to be designated as a qualified voting system. This review process has been conducted by NASED since 1992. HAVA directs that the EAC assume this responsibility. Preliminary planning for this transition began in FY04. This process will fully transition to the EAC in FY05.

National Software Reference Library

In July 2004, EAC and NIST jointly established a part of the National Software Reference Library (NSRL) specifically for voting systems. The Commission encouraged voting system vendors to submit copies of their certified system software to NSRL so that election officials could validate that the software they were using matched the certified version. Five vendors subsequently provided their software for this purpose. Currently, election officials can validate that the software, prior to installation, is the version that was submitted to NSRL. In the coming year, EAC and NIST will work to broaden the scope of this project so that election officials can confirm that the version of software that is installed on a particular voting machine is the same as the original version submitted to NSRL.

State-wide Voter Registration Databases

Section 303 of HAVA requires States to develop a single, uniform, interactive voter registration list. States must have these systems in place by January 1, 2006. Many States have already begun the acquisition and development of these databases, but many others would benefit from guidance issued by EAC. EAC began its efforts toward developing voluntary guidance on state-wide voter registration databases by holding a meeting on December 14, 2004, wherein election officials who have implemented a state-wide voter registration databases testified about their experiences. In addition, EAC has empanelled a voter registration database working group to identify questions, issues and problems that should be addressed by the final guidance. EAC plans to have guidance available to the States by summer 2005.

Reporting and Auditing

EAC must assure that States are good stewards of the Federal funds with which they have been entrusted. States have already received nearly $2.2 billion in Federal funds. To monitor the use of these funds, EAC and GSA made certain restrictions applicable to these funds which require regular reporting and annual auditing. What is more, HAVA armored EAC with

additional, special audit authority. EAC will use these tools to review the States' spending of HAVA funds.

Reporting

Reports on Title II Funds

HAVA Section 258 requires States to submit reports to EAC on the activities conducted with requirements payments provided under HAVA Title II during the Federal fiscal year. This report must include:

- a list of expenditures made with respect to each category of activities described for the use of funds;
- the number and type of articles of voting equipment obtained with the funds; and
- an analysis and description of:
  - the activities funded to meet HAVA requirements; and
  - how such activities conform to the submitted State plan.

This report covers the Federal fiscal year and is due no later than six months after the end of each fiscal year. Accordingly, each State that received a requirements payment by September 30, 2004 should file its first report on these funds with EAC no later than March 30, 2005.

EAC notifies the States of this reporting requirement when the funds are disbursed and reminds States of this reporting requirement in letters and conversations throughout the year. The States are required to submit Standard Form 269 as part of this report.

Reports on Title I Funds

Unlike the reporting required for Title II requirements payments, HAVA does not explicitly require reports from the States on HAVA Title I funds. Nevertheless, given the reporting and audit responsibilities of the EAC, it is prudent and necessary for the EAC to request information on the use of Title I funds.

In a July 2003 letter to the States, GSA noted that the first reports on HAVA Title I "early money" were due to GSA by January 21, 2004. The vast majority of the States submitted their first reports to GSA using a short version of Standard Form 269, known as Standard Form 269A. The financial reports from seven of the 55 States (including the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands) that received section 101 funds disclosed that no disbursements were made from those funds during the reporting period. Also, 20 of the 30 States that received section 102 funds reported making no disbursements from those funds during the period. Of the States that did report disbursements of section 101 or 102 funds, few provided the verification of actual purchases and expenditures requested by GSA.

Since its formation, EAC has assumed the responsibility for receiving reports regarding these Title I funds, in accordance with the agency's assumption of its audit responsibilities under HAVA, Title IX, Section 902. As such, EAC has taken steps to obtain additional information regarding reports given to GSA that were sparse on details. In addition, EAC has taken steps to put the States on notice of the type of reporting that EAC will expect in the future. In January 2005, EAC sent a letter to the chief state election officials, directing the State to:

- file all subsequent reports regarding Title I funds with EAC, annually, beginning February 28, 2005;
- disclose, in separate reports for section 101 and 102 funds, the financial activity for the previous calendar year on a Standard Form 269; and
- provide the same detail on the expenditures that is required for the reports on Title II requirements payments.

The reporting requirements put forth in this letter differ from the reporting provisions for the requirements payments in two ways:

- the reports on the Title I funds will disclose financial activity during the previous *calendar* year, rather than the previous *fiscal* year; and
- the reports on the Title I funds will be due annually at the end of February, while requirements payments reports are to be filed not later than six months after the end of the Federal fiscal year (March 30).

This approach continues the reporting period originally established by GSA for Title I funds and allows EAC earlier access to information on HAVA Title I financial activity than for requirements payments. In addition to the letter instructing the States on reporting requirements, EAC will provide information and training to States through special sessions at conferences of State and local election officials on how and when to report expenditures of HAVA funds.

Auditing

Section 902 of HAVA sets forth EAC and other agencies' audit authority over funds disbursed under its provisions. A regular audit of Federal funds is contemplated in Section 902(b)(1). This audit will be accomplished through the Single Audit program, wherein state auditing agencies conduct a single audit of all Federal funds expended by covered state and local entities. HAVA also provides for two other means of extraordinary audit power. First, HAVA establishes that the funds shall be subject at least once during the term of the program to an audit by the Comptroller General. Second, section 902(b)(6) of HAVA allows EAC to conduct a "special audit" or "special examination" of the funds which are subject to regular audit under Section 902(b)(1). This special audit covers every HAVA program, including funds distributed

under Section 101, 102, Title II, and programs administered by the Department of Health and Human Services.

While HAVA grants audit authority to various agencies, HAVA grants the Comptroller General the sole authority to recoup funds on behalf of the United States. Funds can be recouped when the Comptroller General finds that the recipient is out of compliance with the requirements of the program under which the funds are provided or when an excessive payment has been made to the recipient.

HAVA offered no guidelines under which a special audit should be conducted. Thus, on January 27, 2005, EAC adopted a policy and procedure for exercising its special audit authority. That policy included the following elements:

- Regularly review single audits and reports filed by States as well as other credible information on States' HAVA spending.
- When a discrepancy or potential lack of compliance is revealed, analyze the risk to HAVA funds. The analysis should identify the source of any threat as well as the severity of the threat.
- Determine the need for additional review and information. If additional information is needed, consider conducting a special audit. If the discrepancies are evident and are sufficiently identified by the existing information, then EAC will refer the discrepancy to the appropriate enforcement agency, whether that is the U.S. Department of Justice, the Comptroller General, or other appropriate State or Federal enforcement agency.
- When a decision is made to conduct a special audit, EAC will define the scope and type of audit. The audit may take on one or more of the three types of audits: financial, compliance, and/or agreed-upon terms. The scope of the audit should include the term of the audit (e.g., from the time of receipt to present, a particular fiscal year, or other terms established by the Commission) and the funds that will be audited (e.g., Section 101, Section 102, Title II).
- Develop a plan for the audit through a scope of work for the IG, a contractor, or another Federal Government agency who will conduct the audit on behalf of EAC.
- Upon completion of the audit and report, if the findings reveal that the recipient is out of compliance with the requirements of the HAVA program(s), then EAC should refer the audit and the recipient to the Comptroller General with a request to take action to recoup funds on behalf of the United States. If potential voting rights, civil rights, or criminal violations are identified by the special audit report, EAC should refer the audit and recipient to the Department of Justice or another appropriate state of Federal law enforcement agency.

In 2005 and beyond, EAC will use its resources and its authority under HAVA to validate the proper uses of HAVA funds by States and grantees. The money that EAC distributes under HAVA belongs to the United States. EAC will regularly review Single Audit reports as well as state-filed reports on the uses of HAVA funds to assure that HAVA funds are properly spent. In

addition, where the circumstances warrant, EAC will consider the use of its special audit authority to protect the public fisc.

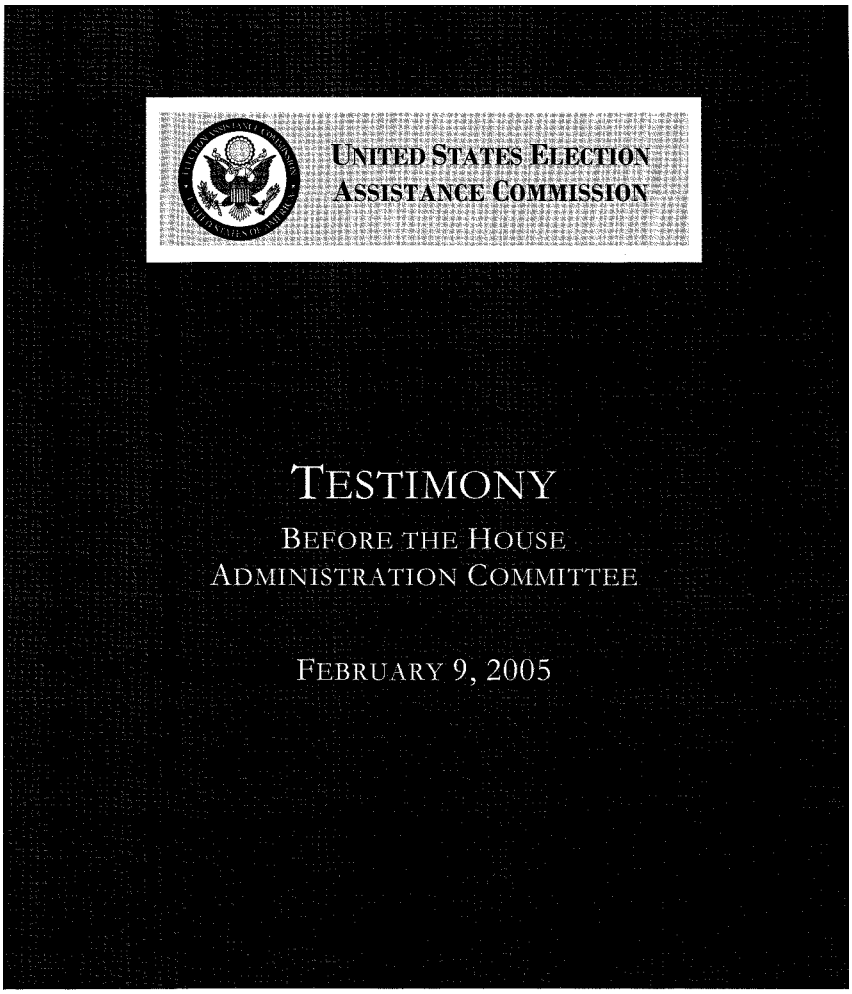
CONCLUSION

Mr. Chairman, as we conclude today's testimony, we observe that HAVA is improving the Federal election process. Election reform is not a process of immediate gratification. In our "fast food" and "real time" society, it is easy to expect a quick fix to any given problem. Elections are complex and dynamic events that require years of advance planning and careful thought. Changing and improving that process likewise takes planning, careful thought, and, most importantly, time.

HAVA has effectuated substantial change in a climate of intense scrutiny. Voting technology has improved. More eligible voters have been able to cast a ballot. Voters are better informed of their rights and how to exercise them. However, a vast amount of work is left to complete. More than half of the country is in the process of upgrading its voting technology, implementing state-wide voter registration databases, and perfecting their processes for provisional voting and voter identification. These States need guidance, and EAC will provide it.

The substantive reforms of HAVA are well underway and EAC is playing its role in implementing those changes. HAVA has proved beneficial to the election process, even in the early days of its implementation. The coming months and years will be critical in reaching a full implementation of HAVA's principles and reforms. With the continued support from Congress, EAC will work to assure that HAVA's potential is realized. EAC, Congress and the nation look forward to the next chapter of HAVA's success story.

Mr. Chairman, thank you for the opportunity to address this Committee today. We will be happy to answer any questions that you may have.



U.S. Election Assistance Commission
1225 New York Ave., NW – Suite 1100
Washington, DC 20005

Good morning Mr. Chairman and Members of the Committee. Seated before you today are the four members of the U.S. Election Assistance Commission (EAC): Gracia Hillman, Chair; Paul DeGregorio, Vice Chairman; Ray Martinez, III; and DeForest B. Soaries, Jr. Our biographies are attached to this statement. (Appendix 1)

We are pleased to be here this morning to discuss our conclusions about the November 2004 election and the role that the Help America Vote Act of 2002 (HAVA) played in that election. In our testimony, we will review the progress and accomplishments of HAVA leading up to the November 2004 Election and our plans to continue the implementation of HAVA in 2005.

HAVA marks the first Federal program of its kind in the history of voting in this country. HAVA's changes to the voting process in Federal elections are substantial. Although the EAC has been engaged in this election reform effort for only just over a year, we will endeavor in our comments today to inform you of the successes, the frustrations and the work that is left to be done under HAVA.

We appreciate the vested interest that this Committee has in our work. We recognize the importance of what you have done for America as the authorizers of HAVA and look forward to today's discussions.

INTRODUCTION

In October 2002, Congress, with the leadership and overwhelming support of the members of this Committee, passed the Help America Vote Act (HAVA). HAVA represents an unprecedented effort by Congress to enhance the administration of Federal elections through funding, guidance and policies. Previously, this country has relied exclusively on the resources and efforts of the States to conduct Federal elections without assistance and direction from the Federal Government. HAVA recognizes the important role of the States in conducting Federal elections while at the same time providing funding and guidance to the States in a nation-wide effort to make the administration of Federal elections more uniform and consistent.

HAVA was not contemplated as a short-term or partial solution to the issues and problems with the administration of Federal elections that came to the forefront during the 2000 Presidential Election. Rather, HAVA sets out a comprehensive program of funding, guidance, and ongoing research that spans the course of many years. HAVA's primary funding program (Title II) was authorized for three consecutive fiscal years (through 2005). Congress recognized that election reform efforts would go on beyond the 3-year authorization of funds. Therefore, Congress did not apply a fiscal year restriction on the use of the Title II funds. Likewise, HAVA created a Federal commission, the Election Assistance Commission[1], which it authorized initially for a period of three fiscal years. HAVA also contemplated the creation and maintenance of

[1] EAC Organizational Chart is attached as Appendix 2.

Federal guidance on voting systems, provisional voting, voter identification, voter registration databases, and voter information. Congress knew that these important policies and guidance not only would take some time to develop, but also, due to the nature of ever evolving technologies and voting processes, would need revision and updating in keeping with those changes.

Many of the HAVA implementation efforts began in earnest in January 2004 immediately following the formation and appointment of the Election Assistance Commission. To their great credit, States used the limited Federal resources distributed by the General Services Administration (GSA) under Title I and their own state funding to implement those HAVA requirements with deadlines of January 1, 2004, including provisional voting and voter information. But, to put the proper context on HAVA implementation, it is, at best, just crossing into the second year of its multi-year election reform scheme.

All of this having been stated, HAVA has already proven to be a success in revamping the voting process in Federal elections. Provisional voting offered over one million voters the opportunity to cast a ballot in Federal elections in 2004. Prior to HAVA, these persons would have been turned away. HAVA funding has already permitted some States to upgrade their voting systems to comply with HAVA. Other States have used HAVA funds to implement or improve their state-wide voter registration databases to manage voter lists and prevent the fraud that has surrounded voter registrations in the past. These are just a few of the success stories of HAVA that will be discussed more fully below.

The House Administration Committee will hear, if it has not already, from detractors that say that HAVA has not lived up to its billing and has failed to meet their expectations of election reform. In one respect, they are correct. To the extent that HAVA implementation is not complete, we cannot yet realize the totality of its intended benefits and reforms. Furthermore, the States have expressed understandable frustration with trying to meet HAVA requirements within the prescribed deadlines. To address these concerns, the Election Assistance Commission has taken an aggressive approach to its work in 2004 and will continue that pace and determination in 2005 to assist the States in their implementation of HAVA. With the much needed funding that the Election Assistance Commission received in its 2005 budget, EAC is embarking upon an accelerated research agenda to develop and publish guidance on voting systems, provisional voting, voter registration databases, and voter identification. Some of this work is already well underway. For example, the Technical Guidelines Development Committee (TGDC) met on January 18 and 19 to pass resolutions tasking the National Institute for Standards and Technology (NIST) with developing voluntary voting system guidelines. In December 2004, EAC received testimony regarding voter registration databases and has scheduled an initial hearing on the issue of provisional voting on February 23, 2005. However, there is a great deal of work to be done to fully implement HAVA and all of its intended election administration reforms.

HAVA SUCCESSES IN 2004

The beginnings of HAVA's significant influence could be felt throughout the country in 2004. States implemented the Title III requirements for provisional voting, voter information and voter identification by January 1, 2004 and used these new principles in their Federal elections in 2004. As with any new statute and new requirements, there were varying interpretations of these mandates and substantial media and public attention to the legal battles that ensued. The results of the first Federal elections conducted under HAVA were a populace that was more engaged in the political process, a surge in voter registration, an opportunity for voters who would previously have been turned away to vote provisionally, an unprecedented amount of information available to voters regarding the voting process and their voting rights, improving voting technology, and the promise of more reform and reflection on the voting process to come in the following years. There can be no question that HAVA positively influenced the 2004 elections.

Federal Funding Programs

Prior to the enactment of HAVA, Federal funds had not been committed to the improvement of the administration of Federal elections. Other Federal legislation was enacted to impose limitations and requirements on the administration of elections, but never before had those expectations been backed by Federal funding. Congress has appropriated over $3,000,000,000 to help States meet the requirements of HAVA and improve the administration of Federal elections. Other HAVA programs such as the College Poll Worker program, the National Parent-Student Mock election, and the program to assure access for individuals with disabilities have been funded by Congress in the amounts of $950,000, $400,000, and $33,000,000, respectively.

EAC, GSA, and HHS have distributed a total of $2,213,847,325 to the States, the District of Columbia and the Territories since the enactment of HAVA. The following table shows the amounts that have been distributed to each of the States and Territories for their use to implement the provisions of HAVA.

	Title I "Early Money"		Title II Requirements Payments (Section 251)		Title II Disability Access Grants (Section 261)		
State	Section 101 Payments*	Section 102 Payments*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Total Disbursed to State**
AL	$4,990	$51	$12,835	$23,031	$185	$130	$41,222
AK	$5,000	$0	$0	$0	$100	$100	$5,200
AS	$1,000	$0	$830	$1,489	$100	$100	$3,519
AZ	$5,451	$1,564	$14,523	$26,061	$210	$153	$47,962
AR	$3,593	$2,570	$7,729	$13,869	$109	$100	$27,970
CA	$27,341	$57,322	$94,559	$0	$1,372	$986	$181,580
CO	$4,860	$2,177	$12,362	$22,183	$178	$129	$41,889

State	Title I "Early Money"		Title II Requirements Payments (Section 251)		Title II Disability Access Grants (Section 261)		Total Disbursed to State**
	Section 101 Payments*	Section 102 Payments*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	
CT	$5,000	$0	$9,920	$17,780	$143	$100	$32,943
DE	$5,000	$0	$4,150	$0	$100	$100	$9,350
DC	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
FL	$14,448	$11,581	$47,417	$85,085	$687	$493	$159,711
GA	$7,816	$4,740	$23,171	$41,578	$335	$242	$77,882
GU	$1,000	$0	$0	$0	$100	$100	$1,200
HI	$5,000	$0	$4,150	$0	$100	$100	$9,350
ID	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
IL	$11,129	$33,806	$0	$0	$511	$359	$45,805
IN	$6,230	$9,522	$17,372	$31,173	$251	$175	$64,723
IA	$5,000	$0	$8,495	$15,244	$122	$100	$28,961
KS	$5,000	$0	$7,662	$13,748	$110	$100	$26,620
KY	$4,699	$469	$11,773	$21,126	$170	$121	$38,358
LA	$4,911	$7,352	$12,549	$22,518	$181	$127	$47,638
ME	$5,000	$0	$4,150	$0	$100	$100	$9,350
MD	$5,637	$1,638	$15,201	$27,277	$220	$157	$50,130
MA	$6,590	$1,519	$18,688	$33,534	$270	$191	$60,792
MI	$9,207	$6,531	$28,257	$0	$409	$287	$44,691
MN	$5,314	$0	$14,020	$25,158	$202	$145	$44,839
MS	$3,673	$1,778	$8,023	$14,396	$115	$100	$28,085
MO	$5,875	$11,473	$16,073	$28,842	$232	$164	$62,659
MT	$5,000	$0	$4,150	$0	$100	$100	$9,350
NE	$5,000	$0	$4,920	$0	$100	$100	$10,120
NV	$5,000	$0	$5,785	$10,381	$100	$100	$21,366
NH	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
NJ	$8,141	$8,696	$24,358	$0	$352	$248	$41,795
NM	$5,000	$0	$5,110	$9,170	$100	$100	$19,480
NY	$16,494	$49,604	$0	$0	$796	$559	$67,453
NC	$7,888	$893	$23,431	$42,046	$339	$240	$74,837
ND	$5,000	$0	$4,150	$0	$100	$100	$9,350
OH	$10,385	$30,668	$32,562	$58,430	$143	$328	$132,516
OK	$5,000	$0	$0	$0	$472	$101	$5,573
OR	$4,204	$1,823	$9,962	$0	$143	$102	$16,234
PA	$11,323	$22,917	$35,993	$64,586	$521	$364	$135,704
PR	$3,151	$0	$0	$0	$151	$104	$3,406
RI	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
SC	$4,652	$2,168	$11,602	$20,819	$167	$120	$39,528
SD	$5,000	$0	$0	$0	$100	$100	$5,200
TN	$6,005	$2,474	$16,546	$29,690	$241	$169	$55,125
TX	$17,207	$6,270	$57,505	$0	$834	$602	$82,418
UT	$3,091	$5,727	$5,893	$10,574	$100	$100	$25,485

State	Title I "Early Money"		Title II Requirements Payments (Section 251)		Title II Disability Access Grants (Section 261)		Total Disbursed to State**
	Section 101 Payments*	Section 102 Payments*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	
VT	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
VA	$7,106	$4,527	$20,573	$0	$298	$212	$32,716
VI	$1,000	$0	$0	$0	$100	$100	$1,200
WA	$6,098	$6,799	$16,889	$30,307	$244	$175	$60,512
WV	$2,977	$2,349	$5,476	$9,827	$100	$100	$20,829
WI	$5,694	$1,309	$15,411	$27,653	$185	$158	$50,410
WY	$5,000	$0	$4,150	$7,447	$100	$100	$16,797
Total	$349,180	$300,317	$719,125	$822,257	$12,998	$9,941	$2,213,818

* Figures rounded to nearest thousand.

** Excludes payments made under section 291 by the U.S. Department of Health and Human Services to States for protection and advocacy systems.

As can be seen from the Table above, all States, Territories and the District of Columbia have received Title I, Section 101 funds for use in improving the administration of Federal elections. Thirty States received Section 102 for replacing punch card and lever voting systems. Thirty-five States have requested and received all of the Title II funds available to the State under HAVA. Twenty States have received no or partial Title II funding and have the opportunity to receive additional funds upon providing the certification required by HAVA and requesting those funds.

HAVA funds have already enhanced the election process, touching various aspects of the election administration process. This money has been used by States to develop their state plans detailing how they would comply with HAVA; to develop their administrative complaint procedures; to institute provisional voting; to recruit, educate and train poll workers; and to inform voters of the changes in the voting process. Probably the most tangible effect of HAVA dollars for voters was the use of HAVA funds to improve voting technology.

Voting System Procurement

In States like Georgia, Maryland, Florida and the District of Columbia, voters in the November 2004 election used new electronic or optical scan voting equipment funded by HAVA. Nevada spent a portion of its HAVA funds not only to upgrade voting equipment to touch screen voting systems but also to outfit its voting units state-wide with devices that would produce a contemporaneous paper record of the votes cast on each voting machine. EAC research, as well as reports by other sources such as media, trade associations, and non-governmental research agencies, shows that five of the States have used HAVA money to either fund or reimburse state-wide purchase and implementation of updated voting equipment to meet the requirements of Title III. Many more are in the process of issuing Requests for Proposals (RFP) or other solicitation methods for the procurement of updated voting equipment. The

States are well underway with their efforts to purchase HAVA compliant voting systems to meet the 2006 deadlines.

State	Voting System Procurement Status as of 1/24/05
AL	No procurement status reported
AK	Procurement complete
AS	No procurement status reported
AZ	RFP to be issued February 2005
AR	RFP to be issued March 2005
CA	Feasibility study completed; RFP to follow
CO	RFP being prepared for issue
CT	RFP issued; Due February 2005
DE	Procurement complete
DC	Procurement complete
FL	Procurement in process
GA	Procurement complete
GU	No procurement status reported
HI	Procurement planned for June 2005
ID	RFP to be issued March 2005
IL	Awaiting decision on whether to issue RFP or provide a list of certified equipment from which the counties can purchase
IN	No statewide procurement. Counties will purchase state certified machines.
IA	Procurement planned for 2005
KS	RFP to be issued March 2005
KY	A qualified vendor list has been established; counties will purchase from that list
LA	RFP to be issued March 2005
ME	RFP to be issued by Summer 2005
MD	Procurement complete
MA	Cities will purchase voting equipment approved by the State
MI	Michigan communities are in the process of purchasing optical scan systems from a qualified vendors list established and contracts negotiated by the Secretary of State
MN	Awaiting legislation to develop a procurement process or strategy
MS	RFP issued
MO	New Secretary of State is considering various options for procurement
MT	No procurement status reported
NE	Awaiting budget finalization to determine a procurement strategy
NV	Procurement complete
NH	No procurement status reported
NJ	No procurement status reported
NM	Awaiting legislation to determine procurement strategy
NY	Awaiting legislation to determine procurement strategy
NC	RFP to be issued spring 2005
ND	RFP complete; Contract signed; Certification due March 2005
OH	Change to purchase of optical scan equipment versus DREs
OK	Procurement complete
OR	RFP to be issued summer 2005
PA	Pennsylvania counties will purchase from a list of voting systems certified by the state.
PR	Awaiting action by the legislature to identify procurement process
RI	No procurement status reported
SC	RFP complete; Procurement planned for 2005

State	Voting System Procurement Status as of 1/24/05
SD	Procurement planned for Spring 2005
TN	Pending decision on procurement process
TX	Negotiating contracts with approved vendors from which counties will select and purchase their voting equipment.
UT	Utah has received responses to its RFP. With the change in administration we are awaiting direction as to how to proceed with the procurement process.
VT	Procurement planned for Spring 2005
VI	No procurement status reported
VA	RFP issued in 2004
WA	RFP issued; RPF withdrawn due to inadequate response
WV	Considering procurement options
WI	No procurement status reported
WY	Procurement planned using negotiated contracts

HAVA funds further influenced the 2004 election through the development and use of state-wide voter registration databases in 17 States. Twenty-one other States have entered into agreements for the development of a database and that process is ongoing. Nine others have RFPs pending, but have not made final decisions on those proposals.[2]

Initial reports from the States regarding the use of Title II funds and expenditure of Title I funds since January 1, 2004 are expected to be received from the States on or before March 31, 2005 and will further inform EAC of the States' uses of HAVA funds. HAVA funds have influenced the administration of Federal elections and will continue to have a positive effect as States spend those funds to acquire voting machines, implement databases, train poll workers, and educate and inform the public about the beneficial changes involving Federal elections.

Provisional Voting

Provisional voting was a response to the number of persons who believed that they were registered to vote in 2000 but who were turned away from the polling places when their names did not appear on the poll lists. Provisional voting was not a new concept to all States. Some, such as California and New Mexico, have been administering some form of provisional voting for many years. As with most of the provisions of HAVA, the details of the implementation and many of the interpretations have been left to the States. Understandably, this resulted in various positions on what HAVA meant by "jurisdiction" and how provisional voting should be implemented. This lack of uniformity in implementation strategy is what caused provisional voting to be such a lightening rod in the 2004 elections. Despite the attention, both positive and negative, that was given to provisional voting, overall it can be seen as one of the great successes of HAVA.

To understand the impact of provisional voting, one must first recognize the climate in which it was introduced. Voter registration increased significantly in 2004. On the average,

[2] Electionline.org Briefing: The 2004 Election (December 2004), p 12.

voter registration was up approximately 9% since the November 2000 election. Many of these registrations came late in the cycle and close to the deadlines for submitting voter registration applications. These voluminous registrations at the end of the cycle taxed local election officials in their efforts to ensure that all eligible voters' names appeared on the precinct lists. The solution to that problem, envisioned by the framers of HAVA, was provisional voting. Even if those names were not entered in time to appear on the voter registration list, those persons would be able to vote by provisional ballot and have their eligibility verified after the election. In the November 2004 election more than 1,500,000 voters took advantage of the opportunity to cast a provisional ballot. More than 1,000,000 (68.4%) of those provisional ballots were counted. In simplest terms, more than 1,000,000 eligible voters voted in November 2004 who would have been disenfranchised were it not for HAVA.

The percentage of ballots that were counted varied from State to State. The following table shows available data regarding the number of provisional ballots cast and counted:

State	Total Provisional Ballots Cast	Total Provisional Ballots Counted	% Provisional Ballots Counted
Alabama	6,478	1,865	28.8%
Alaska	23,285	22,498	96.6%
Arizona	101,536	73,658	72.5%
Arkansas	7,675	3,678	47.9%
California	668,408	491,765	73.6%
Colorado	51,529	39,086	75.9%
Connecticut	1,573	498	31.7%
Delaware	384	24	6.3%
District of Columbia	11,212	7,977	71.15%
Florida	27,742	10,007	36.1%
Georgia	12,893	4,489	34.8%
Hawaii	347	24	6.9%
Idaho			
Illinois	43,137	17,000	39.4%
Indiana	1,287	175	13.6%
Iowa	15,406	8,038	52.17%
Kansas			
Kentucky	1,499	221	14.7%
Louisiana	5,880	2,312	39.3%
Maine			
Maryland	48,936	31,860	65.1%
Massachusetts	10,060	2,319	23.1%
Michigan			
Minnesota			
Mississippi			
Missouri	2,203	519	23.6%
Montana	688	378	54.9%
Nebraska	17,421	13,788	79.1%

State	Total Provisional Ballots Cast	Total Provisional Ballots Counted	% Provisional Ballots Counted
Nevada	6,153	2,446	39.8%
New Hampshire			
New Jersey			
New Mexico	5,246	2,728	52.0%
New York			
North Carolina	77,469	50,370	65.0%
North Dakota			
Ohio	157,714	123,912	78.6%
Oklahoma	2,615	201	7.7%
Oregon	8,298	7,077	85.3%
Pennsylvania			
Rhode Island			
South Carolina	4,930	3,207	65.1%
South Dakota	533	66	12.4%
Tennessee	8,778	3,298	37.6%
Texas	25,743	5,662	22.0%
Utah	26,389	18,575	70.4%
Vermont	121	30	24.8%
Virginia	4.127	728	17.6%
Washington	86,239	69,273	80.3%
West Virginia	13,367	8,378	62.7%
Wisconsin	374	119	31.8%
Wyoming	95	24	25.3%
American Samoa			
Guam			
Puerto Rico	14,706		
Virgin Islands	254	197	77.6%
TOTAL U.S.	1,502,730	1,028,470	68.4%

In Alaska, 22,498 of the 23,285 (96.6%) provisional ballots were counted. Conversely, in Hawaii, only 24 of the 347 (6.9%) provisional ballots were counted. The variance in the percentage of ballots counted from State to State is reflective of a number of factors, including the definition of "jurisdiction" for purposes of provisional voting as well as the facts surrounding the individual provisional ballot applications, such as whether the person submitted a timely voter registration application.

It was the diverging definitions of "jurisdiction" that drew national attention. Litigation over provisional voting occurred in at least five States, including most notably Ohio, Michigan, and Missouri. While this may seem like negative and unwanted attention, the reality is that these lawsuits produced a reasonable, workable rule of law regarding provisional voting. The Sixth Circuit Court of Appeals was the highest court to consider issues related to provisional ballots in *The Sandusky County Democratic Party, et al. v. J. Kenneth Blackwell,* 387 F.3d 565 (6th Cir. 2004). Each case considered several common questions: 1) is there a private right of action

under HAVA, 2) who is eligible to receive a provisional ballot, and 3) when should a provisional ballot be legally counted? In each case, including the opinion of the Sixth Circuit, the courts found that there is a private right of action under HAVA using the provisions of 42 U.S.C. § 1983. Second, the opinions resolved that HAVA dictates the availability of provisional ballots. A person is entitled to receive a provisional ballot when his/her name does not appear on the voter registration list, regardless of whether the person is attempting to vote in the precinct to which he should be assigned by virtue of his address. Third, a provisional ballot should be counted when it meets the laws, rules or regulations for such counting established by the state. Thus, if state law or regulation has defined the jurisdiction for counting provisional ballots to be the "precinct," then a voter's provisional ballot will only be counted if he/she casts that provisional ballot in the proper precinct. These decisions preserve the intent of HAVA to work with the States, allowing them to implement HAVA in light of the various State laws and rules governing elections and allowing them to continue practices such as precinct-based voting that they have followed for years.

At the end of the November 2004 election, provisional voting was successful in allowing eligible voters to participate in the electoral process. It allowed eligible voters to cast ballots when they previously would have been turned away. Furthermore, it is better refined and understood thanks to the interpretations of HAVA by the courts of this country.

Voter Information

Section 302(b) of HAVA requires each polling place to display informational posters and sample ballots. These posters must include information regarding:

- the date and hours of the election
- instructions on how to vote
- special instructions for first time voters and voters who registered by mail
- general information regarding voting rights and state and Federal laws prohibiting fraud and misrepresentations in elections.

States were required to implement the use of these pieces of voter information as of January 1, 2004.

For the first time in 2004, voters could anticipate the type of information that would be made available to them at the polling places. They could expect not only to have a sample ballot with the names and offices of the candidates, but also information on how to vote using the voting equipment in place in that precinct. Persons who were first time voters or who registered by mail were given information on the types of identification that were accepted to verify the voter's identity. Further, if a voter experienced a problem in voting, the informational posters identified their voting rights, the laws that governed fraud and misrepresentation, and how to contact appropriate election officials if the voter felt his/her rights had been violated.

An example of the types of information displayed in our nation's voting precincts was provided by the State of Pennsylvania and is attached. (Appendix 3) Similar posters and pamphlets were developed by all of the States. These informational pieces were printed in dozens of languages so that persons whose primary language is not English could understand them. In addition, accommodations were made for sight impaired voters by printing these pamphlets in Braille and in some cases by making an audio recording of the text. It is evident from a review of these documents that where these posters were properly displayed, voters were more informed about their franchise and how to exercise it.

Administrative Complaint Procedures

HAVA required States to establish an administrative complaint procedure that allows voters to report and file complaints regarding voting and violations of HAVA. Most States developed these complaint procedures as a part of their state plans. The procedures must include a process whereby voters make complaints that are notarized for validity, have the opportunity to request and have a hearing of the complaint, and can expect a resolution to the complaint within 90 days of the date of filing. If resolution cannot be reached, the complaint must be referred to a process of alternative dispute resolution and completed within 60 days.

While some States previously had some type of formal or informal dispute resolution regarding election complaints, HAVA created the requirement for a uniform procedure that would cause voter complaints to be taken seriously and resolved in a timely manner. These administrative complaint procedures were not specifically designed to adjudicate complaints of fraud or ill practice, but this forum will undoubtedly shed light on past and future frauds on the election system and will hopefully prevent these acts from being ignored. At the time of this hearing, the 90-day period for resolution of early-filed complaints is just ending. Now that the hearing phase has ended, EAC will collect data regarding the number, types and resolutions to administrative complaints that were filed under this procedure.

Election Day Surveys

HAVA funding and the establishment of EAC has given the Federal Government an opportunity to collect and study a wide range of data related to the November 2004 election. EAC's research agenda contains three survey pieces: the Election Day Survey, the Military and Overseas Absentee Ballot Survey, and a revised National Voter Registration Act (NVRA) Survey. These survey instruments collect data on both a county and state level regarding a litany of voting administration issues, including:

Ballots Cast and Counted

- the number of ballots cast and counted
- the number of absentee ballots requested and counted
- the reasons that absentee ballots were rejected
- the number of provisional ballots cast and counted

- the reasons that provisional ballots were rejected

Voting Systems

- the number and types of voting equipment
- the number and types of voting machine malfunctions that occurred

Military Voting

- the number of military and overseas voters who requested ballots
- the number of military and overseas voters who cast and returned ballots
- the method of transmitting military and overseas ballots

Voter Registration

- the number of registered voters
- the number of voter registration applications received and processed
- the reasons for rejecting voter registration applications
- the form of voter registration applications accepted
- the means of storing voter registration data
- the number of voters who were removed under NVRA purging provisions
- the means of comparing voter registration applications to existing data to prevent duplicate and fraudulent registrations

Copies of the Election Day Survey and Military and Overseas Absentee Ballot Survey are attached. (Appendixes 4 and 5) The NVRA survey is in the final stages of development and has not yet been released to the States.

EAC has experienced a notable response to the Election Day Survey. Forty-one States have responded. EAC expects to receive an equal or greater response to its Military and Overseas Absentee Voter Survey, which was due on January 31, 2005. Once the final data from the NVRA survey is received by EAC (due March 31, 2005), EAC will compile a comprehensive report detailing the happenings of the November 2004 election as revealed by the survey data.

This information will in some cases serve as the basis on which we evaluate future elections and future election administration. Data from previous elections will further inform us of the improvements that have been achieved and the work yet to be done. Further, the data gathered through these surveys will be an invaluable addition to EAC's work as a clearinghouse of information to be shared among the States.

Poll Worker Recruitment Programs

Under Title V of HAVA, EAC developed the first Federal program to recruit and train poll workers. The HAVA College Poll Worker Program was designed to encourage students at institutions of higher education to assist local governments in the administration of elections by

serving as nonpartisan poll workers or assistants and to encourage local governments to use the services of students participating in the program. In fiscal year 2004, the HAVA College Program received $750,000 for the purpose of issuing grants to institutions of higher learning and associated organizations for use in the development of recruitment and training programs.

Following the announcement of the grant program, the Commission reached out to almost 40 organizations and associations, encouraging them to advertise the program within their networks. EAC staff fielded over 150 inquires from around the country, regarding the grant application process. Ultimately, 88 organizations applied for a HAVA college poll worker grant.

Because of the overwhelming interest in the program, EAC had to make tough choices as to which applicants would share in the available grant funds. An independent panel of 18 experts reviewed the eligible applications and gave each a score. EAC staff closely reviewed the top scorers and EAC ultimately chose 15 finalists. These 15 grantees shared the $630,000 of available grant funds. The 15 grants went to a variety of community colleges, four year colleges and universities, and non-profit organizations with a national and regional focus. A breakdown of the grant awards is shown in the table below.

Grantees	Location of Grantees	Amount Requested	Amount Awarded
Asnuntuck Community College	Enfield, CT	$91,344	$30,000
Assoc. Students, Inc. (Cal State Univ.)	Long Beach, CA	$41,912	$25,000
Eastern Michigan University	Ypsilanti, MI	$54,356	$25,000
Florida Memorial College	Miami Gardens, FL	$149,911	$50,000
Golden Key International Honor Society	Atlanta, GA	$148,250	$130,000
Illinois Central College	East Peoria, IL	$14,785	$12,000
Los Angeles Conservation Corps	Los Angeles, CA	$22,310	$20,000
Northampton Community College	Bethlehem, PA	$26,857	$25,000
Northern Kentucky University	Highland Heights, KY	$45,273	$25,000
Roxbury Community College	Boston, MA	$70,470	$30,000
Rural Ethnic Institute	Rapid City, SD	$149,537	$50,000
University of Baltimore	Baltimore, MD	$149,350	$70,000
University of Maryland College Park	College Park, MD	$67,270	$25,000

Grantees	Location of Grantees	Amount Requested	Amount Awarded
University of North Texas	Denton, TX	$149,280	$80,000
Wiley College	Marshall, TX	$31,978	$30,000
	Totals:	$1,212,883	$627,000

Combined, the 15 grantees estimated that over 5,300 students would be recruited into the poll worker program. Student recruitment goals were met. Over 5,300 students were recruited, 2,000 students were trained, and 1,700 students were recruited and placed as poll workers or poll assistants.

To further assist States and local election officials in recruiting poll workers, EAC launched a National Poll Worker Initiative in June 2004. EAC sought and gained the involvement of corporations, private organizations and private citizens in encouraging people to serve as poll workers on November 4. To further shed light on the need to recruit, train and retain poll workers, EAC used its September 2004 meeting to focus the attention of the country on the shortage of poll workers. EAC's efforts spurred corporations like CitiGroup and agencies like the Department of Agriculture to encourage their employees to participate in the electoral process as nonpartisan poll workers by adding that activity to its list of community involvements. In some cases, employers agreed to allow employees to serve as poll workers using approved, paid leave other than the employee's vacation.

These poll worker recruitment programs were first-time Federal initiatives. Never before had national attention been focused on the important work of those who serve democracy at the polling place or on the shortage of persons willing to help. The EAC poll workers recruitment programs were a beginning in an effort to assure that America's polling places are fully staffed with trained and knowledgeable poll workers. EAC continues to receive pledges of interest and assistance with its continued efforts to aid States and local jurisdictions in recruiting and training poll workers.

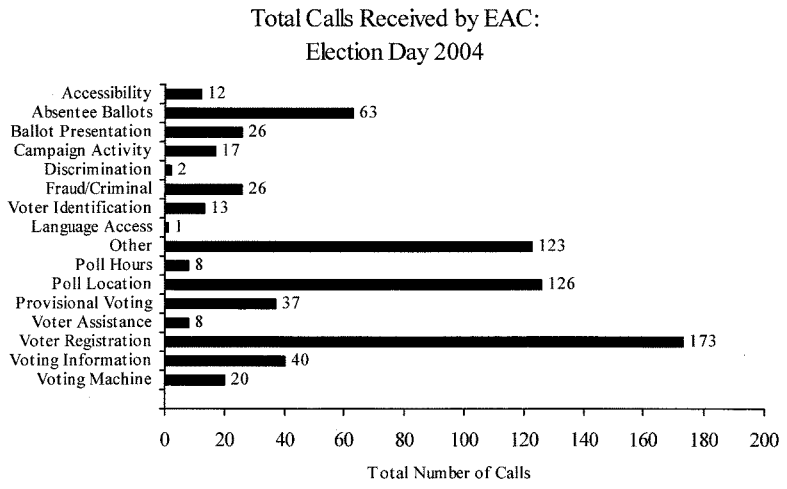
Election Day 2004 Findings

On Election Day 2004, the EAC Commissioners traveled to Florida, Ohio, California, New York, New Jersey, Illinois and Missouri to observe first-hand the events, successes and problems that occurred in the polling places of America. While the Commissioners saw many of HAVA's successes such as persons casting provisional ballots, they also witnessed poll workers who were not always so clear on when a provisional ballot should be offered to a voter. They saw polling places where informational signs were posted and polling places where the required signage was missing. They saw voters enjoying the benefits of upgraded and technologically advanced voting machines as well as voters who cast their ballots on machines that were decades

old. They saw polling places that operated with the utmost of efficiency and precincts where voters stood in line for hours to exercise their right to vote.

Even prior to Election Day, the EAC Commissioners were in touch with State and local election officials to discuss issues and concerns with the upcoming election. EAC, as a part of its clearinghouse role, hosted a telephone conference which gave election officials an opportunity to share problems and solutions that they experienced in preparing for the election. These calls revealed significant concerns about the administration of provisional voting and the ability of election officials to timely process the high volume of voter registrations.

While the Commissioners observed the November 2004 election in the field, the EAC office was manned by their trained staff to answer the calls of Americans who had questions about voting. Nearly 700 calls were fielded by the Election Assistance Commission staff from 6:00 a.m. until 10:30 p.m. on November 4, 2004. The vast majority of the calls involved questions regarding the location of a polling place, the hours of voting, and the status of voter registration. Conversely, relatively few calls involved allegations of improper activity.



BUILDING THE FRAMEWORK FOR EXCELLENCE IN 2005

EAC's observations from the November 2004 election suggest that many things were done right, but there is much to be done. Parts of HAVA have been implemented, yet questions and confusion persist about these new voting practices. In the coming months, many States will purchase vast quantities of voting equipment using the funding provided by HAVA. Those States need guidance on which voting machines meet the requirements of HAVA and what the next generation of voting system standards will require. Likewise, state-wide voter registration lists will be implemented in the next 10 months and States need guidance on what constitutes a single, uniform, interactive voter list. Confusion over when and how to administer provisional voting must be eliminated. EAC's 2005 research and guidance agenda seeks to alleviate and respond to a lot of the uncertainty that surrounds HAVA implementation

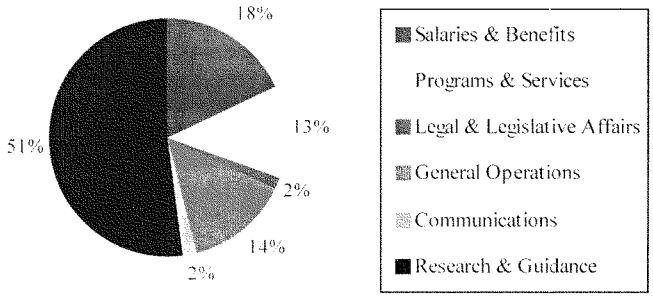
EAC is committed to providing the guidance, assistance and information necessary to aid the states in their implementations of HAVA. EAC's priorities for 2005 are its research agenda and its efforts to assure that HAVA funds are spent properly and in keeping with the spirit of the law. EAC will inform the election reform process with its guidance and police the stewardship of HAVA funds.

EAC Research and Guidance Agenda for 2005

The Election Assistance Commission has set forth an aggressive research and guidance agenda for 2005. HAVA requires EAC to conduct a number of studies and allows the Commission considerable latitude to identify other election administration issues for review and research. The objective of these efforts is to provide information and guidance to election officials and others to promote the overall HAVA goal of improving the administration of U.S. Federal elections.

EAC's theme message for FY2004 was "Getting America Ready to Vote Under HAVA," to reflect the Commissions' formation and the initial actions taken to assist the States in meeting the HAVA requirements for the first Federal election after the passage of the Act. The Commission's theme for FY2005 is "Building the Framework for Excellence." Now that the first Federal elections have occurred under HAVA, we will be focusing our efforts on identifying what elements of HAVA worked well and where improvements might be needed. With the appropriation of its 2005 budget, EAC has received the money it needs to make a financial as well as a programmatic commitment to providing research and guidance to the States. EAC was able to allocate more than 50% of its 2005 budget to research and guidance efforts.

EAC Budget Allocation:
Fiscal Year 2005



A key element of this research effort is the collection of data from States and counties on a number of election administration topics, including the use of provisional ballots, absentee voting, voter registration, voting equipment performance, and availability and training of poll workers. This data collection involves the use of three survey documents:

- Election Day Data Survey
- Military and Overseas Absentee Ballot Survey
- National Voter Registration Act Survey

This will be the first comprehensive data collection effort ever conducted and is expected to yield many useful insights regarding the current state of election administration. EAC will continue to refine its data collection effort in the coming years as a means to assess progress against HAVA's goals.

In addition, the Commission has identified a number of specific areas requiring research for the purpose of developing Title III guidance to the States, based principally on the experiences of the November 2004 election. This includes guidance on:

- Voluntary Voting Systems Standards
- Provisional Voting
- Impact of Voter Identification Requirements
- Voting Information

This work will involve review and analysis of State legislation and administrative procedures, identification of issues, and development of recommendations for application in the 2006 elections. In addition, EAC will conduct studies, as mandated by HAVA, regarding

- Free absentee ballot postage
- Electronic (internet) voting

Finally, EAC will review and update the National Voter Registration form and the instructions that accompany that form.

EAC's priority for informing and assisting the reform of elections is its guidance on voting systems and voter registration databases. Many States are directing major efforts this year to meeting the January 2006 deadline for implementation of state-wide voter registration databases and the replacement or upgrade of voting systems to meet HAVA requirements. The EAC will be issuing voter registration database guidance and expects to receive initial recommendations for voting system standards from the TGDC and NIST for use in the voting system procurements. Both of these efforts will be laying essential groundwork to build on for future technical assistance to the States.

Voluntary Voting System Guidelines

One of EAC's most important mandates is the testing, certification, decertification and recertification of voting system hardware and software. Fundamental to implementing this key function is the development of revised voluntary voting systems standards, which will prescribe the technical requirements for voting system performance, security, and auditability; and identify testing protocols to determine how well systems meet these requirements. Another important element is the certification of testing laboratories to ensure that competent resources are available to perform testing. The final element is the process of reviewing the system test reports to validate that systems have met the standards and therefore can be declared qualified for use in Federal elections. Each of these elements is discussed below.

Technical Guidelines Development Committee and the Standards Development Process

HAVA Section 221 calls for the establishment of a Technical Guidelines Development Committee (TGDC)[3] to assist the Commission in the development of voluntary voting system guidelines (also referred to as voluntary standards). These guidelines, or standards, are characterized as voluntary because EAC does not have the regulatory authority to issue

[3] The Chairman of the TGDC is the Director of the National Institute of Standards and Technology (NIST). The committee is comprised of the Director and fourteen other individuals appointed jointly by the Commission and the Director. HAVA Section 221 prescribes the composition of the TGDC membership to include members of the EAC Standards Board, members of the EAC Board of Advisors, members of the Architectural and Transportation Barrier Compliance Board, a representative of the American National Standards Institute, a representative of the Institute of Electrical and Electronics Engineers, two representatives of the National Association of State Election Directors, and other individuals with technical and scientific expertise relating to voting systems and voting equipment.

mandatory standards. Consequently, each State retains the prerogative of deciding whether to adopt these standards for the procurement of voting systems.

The first meeting of the TGDC was held on July 9, 2004. The focus of this meeting was getting the committee organized and defining working procedures. Commissioner Paul DeGregorio was named as the Federal Officer of the TGDC, as required by the Federal Advisory Committee Act. The members created three sub-committees: Computer Security and Transparency, Core Requirements and Testing, and Human Factors and Privacy. This meeting marked the beginning of TGDC's 9-month process for developing initial voting system guidelines.

Each of these sub-committees is responsible for developing high level resolutions or guiding principles regarding the scope and content of the voting system standards. These resolutions are then debated and finalized by the entire TGDC and, if approved, passed to NIST with tasking to conduct research, evaluate existing standards, or revise or write new standards as required to implement each resolution. The resulting NIST work product will be standards statements or a specification for a standard that needs to be developed, as well as a description of the test protocols for verifying compliance. The TGDC met again on January 18 and 19 and passed 31 resolutions guiding the development of voluntary voting system standards in the areas of security, core requirements and human factors. (Appendix 6)

The TGDC will deliver an initial set of voluntary voting system standards to EAC in April 2005 for consideration and adoption. The standards presented in April will be a start in developing a comprehensive approach to guidelines for voting systems and procedures for implementing the use of those voting systems. However, these standards will not be final. Additional standards work will be required not only to develop these comprehensive standards, but also to update those standards to keep pace with the ever-advancing technology.

Accreditation of Voting System Testing Laboratories

HAVA Section 231 requires EAC and NIST to develop a national program for accrediting voting system testing laboratories. On June 23, 2004, NIST published a notice in the Federal Register announcing the establishment of this program, which will be operated as part of the overall National Voluntary Laboratory Accreditation Program (NVLAP). This program will provide for initial accreditation of testing laboratories as well as periodic re-examination and re-certification that they continue to meet the criteria. NIST will begin accepting applications in April 2005. At this time, the test lab certification process will formally transition from the National Association of State Election Directors (NASED), which has been doing this work since 1992.

NVLAP provides an internationally-recognized, independent evaluation of laboratory competence. Labs wishing to receive accreditation will submit an application describing their facilities and staff qualifications in relation to the relevant standards. In this instance, NVLAP will be examining the applicant's ability to test systems using the voluntary voting system standards, based on their written documentation supplemented with a site visit to inspect their

facilities. Laboratories that successfully complete the accreditation process will be recommended by NIST to the EAC for designation as an approved voting system testing laboratory. EAC will maintain a register of qualified laboratories for vendors and election officials to reference in identifying resources to fulfill their system testing requirements.

Voting System Qualification Process

Accredited testing laboratories will test vendor systems for conformance with the voluntary voting system standards. Once this testing has been completed the results must be reviewed and a determination made of whether the system is eligible to be designated as a qualified voting system. This review process has been conducted by NASED since 1992. HAVA directs that the EAC assume this responsibility. Preliminary planning for this transition began in FY04. This process will fully transition to the EAC in FY05.

National Software Reference Library

In July 2004, EAC and NIST jointly established a part of the National Software Reference Library (NSRL) specifically for voting systems. The Commission encouraged voting system vendors to submit copies of their certified system software to NSRL so that election officials could validate that the software they were using matched the certified version. Five vendors subsequently provided their software for this purpose. Currently, election officials can validate that the software, prior to installation, is the version that was submitted to NSRL. In the coming year, EAC and NIST will work to broaden the scope of this project so that election officials can confirm that the version of software that is installed on a particular voting machine is the same as the original version submitted to NSRL.

State-wide Voter Registration Databases

Section 303 of HAVA requires States to develop a single, uniform, interactive voter registration list. States must have these systems in place by January 1, 2006. Many States have already begun the acquisition and development of these databases, but many others would benefit from guidance issued by EAC. EAC began its efforts toward developing voluntary guidance on state-wide voter registration databases by holding a meeting on December 14, 2004, wherein election officials who have implemented a state-wide voter registration databases testified about their experiences. In addition, EAC has empanelled a voter registration database working group to identify questions, issues and problems that should be addressed by the final guidance. EAC plans to have guidance available to the States by summer 2005.

Reporting and Auditing

EAC must assure that States are good stewards of the Federal funds with which they have been entrusted. States have already received nearly $2.2 billion in Federal funds. To monitor the use of these funds, EAC and GSA made certain restrictions applicable to these funds which require regular reporting and annual auditing. What is more, HAVA armored EAC with

additional, special audit authority. EAC will use these tools to review the States' spending of HAVA funds.

Reporting

Reports on Title II Funds

HAVA Section 258 requires States to submit reports to EAC on the activities conducted with requirements payments provided under HAVA Title II during the Federal fiscal year. This report must include:

- a list of expenditures made with respect to each category of activities described for the use of funds;
- the number and type of articles of voting equipment obtained with the funds; and
- an analysis and description of:
    - the activities funded to meet HAVA requirements; and
    - how such activities conform to the submitted State plan.

This report covers the Federal fiscal year and is due no later than six months after the end of each fiscal year. Accordingly, each State that received a requirements payment by September 30, 2004 should file its first report on these funds with EAC no later than March 30, 2005.

EAC notifies the States of this reporting requirement when the funds are disbursed and reminds States of this reporting requirement in letters and conversations throughout the year. The States are required to submit Standard Form 269 as part of this report.

Reports on Title I Funds

Unlike the reporting required for Title II requirements payments, HAVA does not explicitly require reports from the States on HAVA Title I funds. Nevertheless, given the reporting and audit responsibilities of the EAC, it is prudent and necessary for the EAC to request information on the use of Title I funds.

In a July 2003 letter to the States, GSA noted that the first reports on HAVA Title I "early money" were due to GSA by January 21, 2004. The vast majority of the States submitted their first reports to GSA using a short version of Standard Form 269, known as Standard Form 269A. The financial reports from seven of the 55 States (including the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands) that received section 101 funds disclosed that no disbursements were made from those funds during the reporting period. Also, 20 of the 30 States that received section 102 funds reported making no disbursements from those funds during the period. Of the States that did report disbursements of section 101 or 102 funds, few provided the verification of actual purchases and expenditures requested by GSA.

Since its formation, EAC has assumed the responsibility for receiving reports regarding these Title I funds, in accordance with the agency's assumption of its audit responsibilities under HAVA, Title IX, Section 902. As such, EAC has taken steps to obtain additional information regarding reports given to GSA that were sparse on details. In addition, EAC has taken steps to put the States on notice of the type of reporting that EAC will expect in the future. In January 2005, EAC sent a letter to the chief state election officials, directing the State to:

- file all subsequent reports regarding Title I funds with EAC, annually, beginning February 28, 2005;
- disclose, in separate reports for section 101 and 102 funds, the financial activity for the previous calendar year on a Standard Form 269; and
- provide the same detail on the expenditures that is required for the reports on Title II requirements payments.

The reporting requirements put forth in this letter differ from the reporting provisions for the requirements payments in two ways:

- the reports on the Title I funds will disclose financial activity during the previous *calendar* year, rather than the previous *fiscal* year; and
- the reports on the Title I funds will be due annually at the end of February, while requirements payments reports are to be filed not later than six months after the end of the Federal fiscal year (March 30).

This approach continues the reporting period originally established by GSA for Title I funds and allows EAC earlier access to information on HAVA Title I financial activity than for requirements payments. In addition to the letter instructing the States on reporting requirements, EAC will provide information and training to States through special sessions at conferences of State and local election officials on how and when to report expenditures of HAVA funds.

Auditing

Section 902 of HAVA sets forth EAC and other agencies' audit authority over funds disbursed under its provisions. A regular audit of Federal funds is contemplated in Section 902(b)(1). This audit will be accomplished through the Single Audit program, wherein state auditing agencies conduct a single audit of all Federal funds expended by covered state and local entities. HAVA also provides for two other means of extraordinary audit power. First, HAVA establishes that the funds shall be subject at least once during the term of the program to an audit by the Comptroller General. Second, section 902(b)(6) of HAVA allows EAC to conduct a "special audit" or "special examination" of the funds which are subject to regular audit under Section 902(b)(1). This special audit covers every HAVA program, including funds distributed

under Section 101, 102, Title II, and programs administered by the Department of Health and Human Services.

While HAVA grants audit authority to various agencies, HAVA grants the Comptroller General the sole authority to recoup funds on behalf of the United States. Funds can be recouped when the Comptroller General finds that the recipient is out of compliance with the requirements of the program under which the funds are provided or when an excessive payment has been made to the recipient.

HAVA offered no guidelines under which a special audit should be conducted. Thus, on January 27, 2005, EAC adopted a policy and procedure for exercising its special audit authority. That policy included the following elements:

- Regularly review single audits and reports filed by States as well as other credible information on States' HAVA spending.
- When a discrepancy or potential lack of compliance is revealed, analyze the risk to HAVA funds. The analysis should identify the source of any threat as well as the severity of the threat.
- Determine the need for additional review and information. If additional information is needed, consider conducting a special audit. If the discrepancies are evident and are sufficiently identified by the existing information, then EAC will refer the discrepancy to the appropriate enforcement agency, whether that is the U.S. Department of Justice, the Comptroller General, or other appropriate State or Federal enforcement agency.
- When a decision is made to conduct a special audit, EAC will define the scope and type of audit. The audit may take on one or more of the three types of audits: financial, compliance, and/or agreed-upon terms. The scope of the audit should include the term of the audit (e.g., from the time of receipt to present, a particular fiscal year, or other terms established by the Commission) and the funds that will be audited (e.g., Section 101, Section 102, Title II).
- Develop a plan for the audit through a scope of work for the IG, a contractor, or another Federal Government agency who will conduct the audit on behalf of EAC.
- Upon completion of the audit and report, if the findings reveal that the recipient is out of compliance with the requirements of the HAVA program(s), then EAC should refer the audit and the recipient to the Comptroller General with a request to take action to recoup funds on behalf of the United States. If potential voting rights, civil rights, or criminal violations are identified by the special audit report, EAC should refer the audit and recipient to the Department of Justice or another appropriate state of Federal law enforcement agency.

In 2005 and beyond, EAC will use its resources and its authority under HAVA to validate the proper uses of HAVA funds by States and grantees. The money that EAC distributes under HAVA belongs to the United States. EAC will regularly review Single Audit reports as well as state-filed reports on the uses of HAVA funds to assure that HAVA funds are properly spent. In

addition, where the circumstances warrant, EAC will consider the use of its special audit authority to protect the public fisc.

CONCLUSION

Mr. Chairman, as we conclude today's testimony, we observe that HAVA is improving the Federal election process. Election reform is not a process of immediate gratification. In our "fast food" and "real time" society, it is easy to expect a quick fix to any given problem. Elections are complex and dynamic events that require years of advance planning and careful thought. Changing and improving that process likewise takes planning, careful thought, and, most importantly, time.

HAVA has effectuated substantial change in a climate of intense scrutiny. Voting technology has improved. More eligible voters have been able to cast a ballot. Voters are better informed of their rights and how to exercise them. However, a vast amount of work is left to complete. More than half of the country is in the process of upgrading its voting technology, implementing state-wide voter registration databases, and perfecting their processes for provisional voting and voter identification. These States need guidance, and EAC will provide it.

The substantive reforms of HAVA are well underway and EAC is playing its role in implementing those changes. HAVA has proved beneficial to the election process, even in the early days of its implementation. The coming months and years will be critical in reaching a full implementation of HAVA's principles and reforms. With the continued support from Congress, EAC will work to assure that HAVA's potential is realized. EAC, Congress and the nation look forward to the next chapter of HAVA's success story.

Mr. Chairman, thank you for the opportunity to address this Committee today. We will be happy to answer any questions that you may have.

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #01-04, Offered by: Dr. Harding

Three subcommittees shall be established to gather and analyze information. Subcommittees shall be comprised only of TGDC members. Subcommittees shall propose resolutions to the TGDC on best practices, specifications and standards. Subcommittees shall be named:

i) Security and Transparency,

ii) Human Factors and Privacy, and

iii) Core Requirements and Testing.

I hereby certify the accuracy of Resolution #01-04:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #02-04, Offered by: Mr. Berger

The Chair shall survey the interest of TGDC members, and thereafter appoint the members and chairs of the subcommittees.

I hereby certify the accuracy of Resolution #02-04:

Craig S. Buckhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #03-04, Offered by: Dr. Harding

Resolutions prepared by the subcommittees shall be considered by the TGDC. Resolutions adopted by the TGDC shall be referred to NIST for technical assistance and editing. Upon return from NIST, the TGDC shall review the resolutions to confirm they conform to its intent.

I hereby certify the accuracy of Resolution #03-04:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #04-04, Offered by: Ms. Davidson

Adopted resolutions and appropriate explanatory materials comprise the "first set of recommendations" mandated by the Help America Vote Act.

I hereby certify the accuracy of Resolution #04-04:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #05-04, Offered by: Mr. Craft

The TGDC shall recommend to the EAC that they expedite making currently certified voting software available to the National Software Reference Library as soon as possible.

I hereby certify the accuracy of Resolution #05-04:

Craig S. Burkhardt, Parlimentarian

1 **U.S. Election Assistance Commission**

2 **Technical Guidelines Development Committee**

3 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

4

5 **Resolution #01-05**, Offered by: Ms. Quesenbery

6 Title: Work Product Instructions to Staff of National Institute for Standards and

7 Technology (NIST)

8

9 The TGDC intends to consider and adopt resolutions during its January 18 and 19, 2005

10 meeting. Each resolution will make certain findings or conclusions. The resolutions will

11 also request specific technical assistance from NIST.

12

13 At the conclusion of the meeting, the TGDC Chair will sort the adopted resolutions by

14 priority. Priority is to be given to resolutions and requests for technical support that can

15 result in work product that will form a part of the April initial recommendations of the

16 TGDC.

17

18 Generally, NIST staff members with subject matter expertise will be instructed by the

19 TGDC Chair and his designates to conduct further research and inquiry, gather and

20 evaluate existing standards or standards-like materials which apply to the resolution, and

21 revise such materials or draft new standards or standards-like materials. In many cases,

22 there may be few existing standards materials related to a resolution. In those instances,

1 NIST staff is generally instructed to gather, review, revise, or write relevant standards-
2 related materials. The NIST technical assistance work product will be categorized as pre-
3 decisional materials, and should be provided directly to members of the TGDC for their
4 review.
5
6 If, in the course of providing technical assistance, NIST staff discovers significant errors
7 in an adopted resolution or otherwise concludes that to continue providing technical
8 assistance is unwise, technical assistance should be temporarily halted. Such reasons to
9 halt technical assistance may also include discovery that a requested task is technically
10 infeasible, or that the scope of the request exceeds the capabilities or legal authorities of
11 NIST. NIST shall immediately bring the matter to the attention to the TGDC Chair, who
12 will consult with the sponsor of the resolution and the Chair of the applicable
13 subcommittee. If the TGDC Chair, subcommittee Chair and resolution sponsor agree that
14 the request for technical assistance to NIST should be revised, they shall have authority to
15 do so. In such cases, a new or revised request for technical assistance shall be issued to
16 NIST in writing, with copies to all TGDC members. In such cases, the sponsor of the
17 relevant adopted resolution shall examine whether the adopted resolution should be
18 reconsidered or revised during a subsequent meeting of the TGDC. If so, the
19 parliamentarian should be consulted to draft the appropriate resolution materials.
20
21 If, in the course of providing technical assistance, NIST staff discovers an alternative
22 approach that logically fits into the scope of an adopted resolution, NIST staff may

develop and present the alternate approach. In such cases, NIST staff shall also provide the technical assistance specified in the resolution.

If, in the course of providing technical assistance, NIST staff discovers duplicative or conflicting resolution findings or requests for technical assistance, the TGDC Chair shall be consulted. In such instances, the TGDC Chair shall consult the Chair of the applicable subcommittee and the sponsor of the resolution(s) for clarification. The Chair shall then issue a new written request for technical assistance to NIST and provide copies to TGDC members.

During subsequent meetings of the TGDC, members of the TGDC may consider, amend and adopt the technical assistance work product. Such adopted technical assistance work product will be appended to the appropriate resolution, and will form a portion of the initial recommendations to the Election Assistance Commission.

All work products to be considered by NIST shall be received no later than five working days prior to public meetings by members of the TGDC prior to consideration.

I hereby certify the accuracy of Resolution #01-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #02-05, Offered by: Ms. Quesenbery

Title: Accessible Voting Systems

The TGDC has concluded that standards for voting systems should include requirements for accessibility that meet the HAVA requirement for accessible voting by incorporating the latest available accessible technology. Further, the TGDC directs NIST to research and draft standards based on, but not limited to, existing requirements from the VSS 2002, IEEE P1583 draft 5.3.2a, *ADA Accessibility Guidelines (ADAAG)*, 36 CFR Part 1194 (section 508) and other relevant usability and accessibility guidelines and federal laws and regulations in order to develop future accessibility requirements for voting systems.

I hereby certify the accuracy of Resolution #02-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #03-05, Offered by: Ms. Quesenbery

Title: Human Factors and Privacy of Voting Systems at the Polling Place

The TGDC has considered the issue of what is required to ensure both access to the voting system by voters with disabilities, and usability and privacy for all voters. It has concluded that usability, accessibility, and privacy are functions of both the system used to vote and the environment of the polling place. The TGDC directs NIST to research and draft guidance on the deployment and configuration of systems in the polling place to ensure usability, accessibility, and privacy. These guidelines should be combined with the accessibility standards described in Resolution #02-05 or the standards described in Resolution #04-05.

I hereby certify the accuracy of Resolution #03-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #04-05, Offered by: Ms. Quesenbery

Title: Human Factors and Privacy Requirements for Capturing Indication of a Voter's Choice

The TGDC recognized the need for voting system requirements to include human factors and privacy requirements for capturing indication of a voter's choice based on current research. These requirements should be specified so that systems can be evaluated for meeting the requirements. Unclear specifications, such as "intuitive", "unambiguous", or "meaningful" should be avoided. Further, performance-based standards are preferred over specific design standards, because performance standards address the total effectiveness of the system more directly than do design standards and typically they are not technology specific. The TGDC directs NIST to:

1. Create an outline of the human factors and privacy requirements related to capturing indication of a voter's choice,
2. Write draft human factors and privacy standards based on this outline by using existing requirements from the VSS2002, IEEE P1583 draft 5.3.2a, *ADA*

Accessibility Guidelines (ADAAG), 36 CFR Part 1194 (section 508) and other relevant usability and accessibility guidelines and regulations,

3. Identify areas where further requirements development for capturing indication of a voter's choice is needed, noting when performance-based usability standards are possible, and
4. Write all requirements so that they are testable and the tests themselves can be conducted either by inspection by a person with reasonable knowledge of systems, user interface design, and accessibility or by performance-based usability tests with clear, repeatable protocols.

I hereby certify the accuracy of Resolution #04-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution #05-05,** Offered by: Ms. Quesenbery

7 Title: Human Performance-Based Standards and Usability Testing

8

9 The TGDC has concluded that voting systems requirements should be based, wherever
10 possible, on human performance benchmarks for efficiency, accuracy or effectiveness,
11 and voter confidence or satisfaction. This conclusion is based, in part, on the analysis in
12 the NIST Report, *Improving the Usability and Accessibility of Voting Systems and*
13 *Products* (NIST Special Publication 500-256). Performance requirements should be
14 preferred over design requirements. They should focus on the performance of the interface
15 or interaction, rather than on the implementation details. When it is not possible to specify
16 performance requirements (whether because conformance tests cannot be formulated or
17 because they would be too onerous to implement), testable, implementation-neutral design
18 requirements should be used. Conformance tests for performance requirements should be
19 based on human performance tests conducted with human voters as the test participants.
20 The TGDC also recognizes that this is a new approach to the development of usability
21 standards for voting systems and will require some research to develop the human
22 performance benchmarks and the test protocols. Therefore, the TGDC directs NIST to:

1. Create a roadmap for developing performance-based standards, based on the preliminary work done for drafting the standards described in Resolution # 4-05,
2. Develop human performance metrics for efficiency, accuracy, and voter satisfaction,
3. Develop the performance benchmarks based on human performance data gathered from measuring current state-of-the-art technology,
4. Develop a conformance test protocol for usability measurement of the benchmarks,
5. Validate the test protocol, and
6. Document test protocol and benchmarks so that an independent test laboratory can reproduce the testing.

I hereby certify the accuracy of Resolution #05-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #06-05, Offered by: Ms. Quesenbery

Title: Accommodating a Wide Range of Human Abilities

The TGDC recognizes that there is a wide range of human abilities. The voting population includes not only people with specifically identified disabilities but also the aging population, language minorities, and people with other special needs. A goal of voting system standards should be to accommodate, as much as possible, this wide range of abilities to ensure the greatest usability and accessibility of those systems. This approach is sometimes called "universal design" or "universal usability." In drafting standards, the TGDC directs NIST to:

1. Consider what accommodations to voter abilities can be included in the standards for all voting systems, using currently available technology, and
2. Develop principles for "universal design" based on existing best practices and other guidelines or standards such as 36 CFR 1194 (Section 508), to guide future standards development to aid in updating the voting system standards.

I hereby certify the accuracy of Resolution #06-05:

Craig A. Burkhardt

1 _____
2 Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #08-05, Offered by: Ms. Quesenbery

Title: Usability Guidance for Instructions, Ballot Design, and Error Messages

The TGDC has considered the issue of what is required to improve usability and reduce errors for capturing indication of a voter's choice. It has concluded that usability is a function of the machine used to vote as well as other characteristics of the voting system such as the instructions for voters and poll workers, ballot design, and machine error and help messages. Research and best practices in the areas of plain language design, form design, and usability are potentially relevant to such voting system characteristics. The TGDC directs NIST to research and draft guidelines and standards where possible to improve the usability of instructions, ballot design, and error and help messages in all formats used. These guidelines should be combined with the standards described in Resolution # 4-05.

I hereby certify the accuracy of Resolution #08-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #09-05, Offered by: Ms. Quesenbery

Title: General Voting System Human Factors and Privacy Considerations

Errors in the voting process are due to human error and the TGDC notes many examples from recent elections to support this statement. While requirements for capturing indication of a voter's choice is the primary area for human factors and privacy standards development, the TGDC recognizes that all proposed requirements that involve human interaction with the voting system should address any possible human factors and privacy implications. Therefore, the TGDC directs NIST to review all proposed requirements, assess which requirements involve user interaction, and perform the evaluation or research needed to ensure that basic usability, accessibility, and privacy is maintained when these requirements are applied to a voting system.

I hereby certify the accuracy of Resolution #09-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 10-05, Offered by: Ms. Quesenbery

Title: Usability of the Standards

The TGDC recognizes the importance of the usability of the voting systems standards. Independent testing laboratories, election officials, and vendors need to understand these standards and also understand how a system is tested for conformance to the standards in order to have confidence in voting systems that pass the conformance tests. Therefore, to the extent possible, the voting system standards should be written in plain language, understandable by both test experts and by voting officials who are not experts in human factors or design.

I hereby certify the accuracy of Resolution #10-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 11-05, Offered by: Ms. Quesenbery

Title: Availability of Voting Machines for Validating Benchmarks and Conformance Test Protocols

The TGDC is aware that the definition and validation of human performance benchmarks and human performance test protocols as described in the NIST Report, *Improving the Usability and Accessibility of Voting Systems and Products* (Special Publication 500-256), requires testing on a set of typical, state-of-the-art voting machines. The TGDC directs NIST to work with the EAC to determine a means to acquire such voting machines and then make them available to enable NIST to perform the work described in Resolution #05-05.

I hereby certify the accuracy of Resolution #11-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution #12- 05**, Offered by: Dr. Rivest

7 Title: Voter Verifiability I

8

9 The TGDC has considered the various means by which a voting system allows a voter to
10 verify that his or her vote was captured as the indication of the voter's choice. All voting
11 systems must provide such means, as stated in HAVA 2002 section 301(a)(1)(A)(i). Such
12 voter verification means can be categorized as either "direct," as with optical scan or a
13 machine-generated paper ballot, where the voter can directly examine the representation
14 of his ballot, or "indirect," as with many touch-screen Direct Recording Electronic-- DRE
15 machines, where the voter can only verify the "fundamental representation" of his ballot
16 through the assistance of intervening hardware and/or software.

17

18 For voting systems that create more than one representation of the voter's ballot (such as
19 one electronic and one on paper), the TGDC interprets the HAVA language to require that
20 such voter verification must apply to the representation (to be called here the fundamental
21 representation) that is used for the initial vote tabulation.

22

The TGDC therefore finds it useful to divide voting systems into two categories: those (class DV) where each voter is presented a fundamental representation of his ballot that the voter may directly verify, and those (class IV) not in class DV.

The TGDC has concluded that voting systems in class IV or DV must be held to significantly different security requirements, including different constraints on voting system development, different requirements for system documentation, and different testing to mitigate the different risks associated with each type of voting system.

The TGDC therefore requests that NIST perform research and develop standards documents that:

1. Clarifies the distinction between class DV and class IV voting systems as may be necessary,
2. Elaborates and defines the different requirements to be satisfied by class DV and IV voting systems, and
3. Reviews methods of verification accessible by voters with disabilities.

I hereby certify the accuracy of Resolution #12-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 14-05, Offered by: Dr. Rivest

Title: Commercial Off-The-Shelf Software ("COTS Software")

The TGDC has considered the advisability of using Commercial Off-The-Shelf Software ("COTS Software") within voting systems, from a security perspective. It has concluded that, generally speaking, the use of COTS software introduces excessive and unnecessary risk and should be avoided, while specific well-motivated exceptions to this rule may be required upon occasion. The TGDC directs NIST to research and draft standards documents requiring:

1. That the use of COTS software within voting systems is not allowed unless it meets specific exceptional conditions, and
2. That the criteria for exceptions shall be drafted by NIST.

I hereby certify the accuracy of Resolution #14-05:

Craig S. Burkhardt, Parlimentarian

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 15-05**, Offered by: Dr. Rivest

7 Title: Software Distribution

8

9 The TGDC has concluded that, generally speaking, the manner in which software is
10 loaded onto voting systems is not governed by existing standards, and that it is a
11 significant security issue, that warrants more stringent controls. It is important to know
12 which software has been installed on a voting system, when the software has been
13 installed, and from what sources. Without strict controls on these processes, noncertified
14 software could be loaded onto voting systems, with potentially disastrous results. The
15 TGDC directs NIST to research and draft standards documents requiring:

16 1. That the distribution of any software to voting systems shall only be performed by
17 means of physically distributed "read only" or "write once" media, including
18 software such as:

19 (a) Operating system required software,

20 (b) Updates and patches,

21 (c) Data files, and

22 (d) Voting system software.

2. That the electronic transmission of any software to voting machines via networks or wireless introduces extreme risk and should be approached with extreme caution,
3. That the software will include an integrity check (such as a digital signature that positively authenticates its source) that must be verified as part of the process of loading the software, and
4. That the record of loading the software will be written permanently to a system audit log kept in write-once memory.

I hereby certify the accuracy of Resolution #15-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 16-05, Offered by: Dr. Rivest

Title: Setup Validation

The TGDC has considered the issue of electronic voting machine setup validation and has concluded that current standards and practice need substantial improvement in this regard. A setup validation method ensures that a voting system contains the authorized software, contains no unauthorized software, and is in the proper initial state. The TGDC requests NIST to do research and develop standards:

1. That specify the characteristics of acceptable setup validation methods (such as, for example, that the setup validation method may not modify the state of the system nor require the execution of any software currently on the system), and
2. That require each voting system submission to specify an acceptable setup validation method.

I hereby certify the accuracy of Resolution #16-05:

Craig S. Burkhardt, Parlimentarian

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 17-05**, Offered by: Dr. Rivest

7 Title: Testing

8

9 The TGDC directs NIST to research and draft standards documents requiring testing of
10 voting systems that includes a significant amount of open-ended research for
11 vulnerabilities by an analysis team supplied with complete source code and system
12 documentation and operational voting system hardware. The vulnerabilities sought should
13 not exclude those involving collusion between multiple parties (including vendor insiders)
14 and should not exclude those involving adversaries with significant financial and technical
15 resources.

16

17

18 I hereby certify the accuracy of Resolution #17-05:

19

20 Craig S. Bukhardt
21 Craig S. Bukhardt, Parlimentarian
22

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 18-05**, Offered by: Dr. Rivest

7 Title: Documentation

8

9 The TGDC has concluded that it is critical to the security of voting systems that they be
10 documented thoroughly according to a well-specified set of documentation criteria.
11 Proper documentation is an important and essential part of the input for security
12 evaluation. Voting systems that are not well documented may also be less secure in that
13 poor specification of features and operation can facilitate incorrect operation and improper
14 responses to error conditions and other unexpected events.

15

16 This documentation should address all areas of voting system design, architecture,
17 features, controls, and operational modes, and also include recommended management
18 and maintenance procedures. The documentation should specify exactly the operational
19 context of the voting system and all assumptions made affecting the system and how it is
20 operated. It should include all security requirements for operation of the system, including
21 manual, noncomputerized procedures. Particular attention should be paid to processes and

1 procedures that reduce security vulnerabilities throughout the entire voting preparation,
2 balloting, counting and audit phases.
3
4 The TGDC directs NIST to research and draft standards documents requiring voting
5 system documentation, to include but not be limited to such items as:
6 1. Voting system design information including source code and discussion of built-in
7 or procedural protections from NIST Special Publication 800-53 such as for:
8 (a) System and information integrity,
9 (b) Identification and authentication,
10 (c) Access control,
11 (d) Audit and accountability, and
12 (e) System and communications protection.
13 2. Specifications of compatible software or equipment (i.e., operating systems,
14 utilities),
15 3. Evaluation-related documentation including:
16 (a) Risk assessment information,
17 (b) Results of certification, accreditation, and security assessments, and
18 (c) Contingency planning recommendations.
19 4. Operational procedures including:
20 (a) Modes and procedures for each mode,
21 (b) Maintenance procedures,
22 (c) Media protection and media loading procedures, and

(d) Recount procedures.

5. Awareness and training recommendations,
6. Incident response procedures, and
7. Other information deemed relevant to a security evaluation of the proposed voting system.

The issues of [a] redundant representations of ballots created by the voting system and [b] how recounts of these ballots are to be handled are particularly important. Voting systems that store redundant representations of a cast vote must include, as part of their specification, a detailed description of how such representations may be used in counting votes and recounting votes. The description must also specify what procedures, if any, may (or must) be used to detect discrepancies between the various representations, and how such discrepancies may be resolved.

I hereby certify the accuracy of Resolution #18-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 21-05, Offered by: Dr. Rivest

Title: Multiple Representations of Ballots

Voting systems may create one or more electronic representations of ballots in addition to any paper record produced.. For example, three redundant electronic copies may be made, for reliability purposes. As another example, the scanning of an op-scan ballot may create another, electronic, representation of the ballot. A number of issues are related to the use of multiple representations (both electronic and paper) that are in some cases relatively new and not completely identified or understood, and in other cases need uniform terminology and procedures. These issues include:

1. Preventing, detecting, and handling disagreements between the representations, in the rare event that they should occur,
2. Converting between representations, and ensuring that ballots are not multiply converted and counted,
3. Use of multiple representations in fraud analysis,
4. Authenticity of the representations,

5. Marking of ballot representations with unique identifiers, (if and when possible to do so while preserving voter privacy), and
6. Conversion to/from standard formats.

The TGDC has concluded that further research is advisable in identifying potential problems associated with voting systems that use multiple representations of ballots, and in identifying best approaches for handling such problems. The TGDC thus requests that NIST perform such research and draft standards documents that reflect NIST's determination of the best practices and best approaches for handling these problems.

I hereby certify the accuracy of Resolution #21-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 22-05**, Offered by: Dr. Rivest

7 Title: Federal Standards

8

9 Voting systems, while specialized in their purpose, often have many aspects in common
10 with general information technology (IT) systems. Guidelines, standards, and testing
11 programs have been developed for U.S. Government civilian IT systems, typically
12 utilizing ANSI-approved and other voluntary consensus standards, including the
13 Cryptographic Module Validation Program (CMVP) for analysis and testing of
14 cryptographic modules and software, and the National Voluntary Laboratory
15 Accreditation Program (NVLAP) for accreditation of testing laboratories. NIST is
16 currently creating an information security standard (mandated by the Federal Information
17 Security Management Act, specifically, *Recommended Security Controls for Federal*
18 *Information Systems, draft* NIST Special Publication 800-53) affecting all federal
19 government systems. This draft standard specifies the inclusion and proper use of
20 security-related protections affecting many areas of IT system design and development,
21 management, testing, and operations -- all of which have relevance to voting systems.

This and other similar efforts by the U.S. Government have the benefits of having been developed in a public process and having had successful track records with industry.

The TGDC therefore requests that NIST examine existing federal guidelines, standards, and testing programs, and ANSI-approved and other voluntary consensus standards for security in general information technology systems for their relevance and applicability in standards to voting systems, and to draft standards documents that follow such prior guidelines, standards, and programs when possible and where appropriate.

I hereby certify the accuracy of Resolution #22-05:

Craig S. Burkhardt, Parlimentarian

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 23-05**, Offered by: Dr. Rivest

7 Title: Common Ballot Format Specifications

8

9 The TGDC has concluded that the adoption of standard formats for election-related
10 information, such as ballots (both blank and filled-in), has many positive benefits and is
11 worth pursuing. An example of such a standard is OASIS Election Markup Language
12 (EML) Version 4.0, which is an XML-based specification. The TGDC therefore requests
13 NIST to do research and develop standards documents:

14 1. Specifying what existing election information format standards (or portions thereof
15 or variations thereof) are acceptable for use in voting systems, and
16 2. Requiring that voting systems use such standards wherever possible.

17

18 NIST's evaluation of existing election information standards shall consider fitness for
19 function under existing election codes, security, ease and cost of implementation, and
20 other factors judged relevant by NIST. If no existing election information format
21 standards (or portions thereof, or variations thereof) are judged by NIST, upon its detailed

examination, to be acceptable for current use, then NIST should so recommend, and this resolution will have no net effect at this time.

I hereby certify the accuracy of Resolution #23-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 24-05, Offered by: Dr. Schutzer

Title: Conformance Clause

The conformance clause of a standard provides the answers to the important question: what may conform and how? A conformance clause defines, at a high level, what is required of implementers of the specification. The clause may specify minimal requirements for certain functions, as well as extensibility, optional features, and alternative approaches and how they are to be handled. The TGDC requests that NIST draft a conformance clause section for the Voting System Standard.

I hereby certify the accuracy of Resolution #24-05:

Craig S. Burkhardt, Parlimentarian

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 25-05**, Offered by: Dr. Schutzer

7 Title: Precise and Testable Requirements

8

9 For qualification of voting systems to be consistent, fair, and meaningful, it is necessary to
10 control variability in the conformance assessment system. Both the requirements to be
11 tested and the methods by which they are to be tested must be specified with appropriate
12 precision. The TGDC requests that NIST:

13

14 1. Conduct a review and analysis of the requirements in the 2002 VSS to ensure that
15 they are sufficiently precise to enable meaningful testing,
16 2. Include the requirements from the 2002 VSS that are already precise and testable,
17 3. Write testable requirements for those requirements that are not sufficiently
18 precise,
19 4. Expand the testing standards in the VSS to specify test methods of those
20 requirements,
21 5. Update the requirements where appropriate during the review, such as reliability
22 and accuracy specifications, and

6. Adopt, to the extent that NIST determines it is advisable, commonly used equivalent commercial test methods.

I hereby certify the accuracy of Resolution #25-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 26-05, Offered by: Dr. Schutzer

Title: Uniform Testing Methods and Procedures

For consistency and transparency of voting systems testing, and to increase the public trust and confidence in the testing of voting systems, it is necessary that the same set of testing methods and procedures be used by each testing organization. The TGDC requests that NIST draft guidance for how to develop a public set of test methods and procedures.

I hereby certify the accuracy of Resolution #26-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 27-05, Offered by: Dr. Schutzer

Title: Non-Conformant Voting Systems

A provision in the 2002 VSS allows qualification of voting systems that do not conform to the requirements. [*"Any uncorrected deficiency that does not involve the loss or corruption of voting data shall not necessarily be cause for rejection."*] If there are requirements that are frequently unmet by qualified systems, these requirements should be reviewed for possible elimination. The TGDC requests that NIST review the text of the 2002 VSS to determine if the provision for qualification of voting systems that do not conform to the requirements should be deleted.

I hereby certify the accuracy of Resolution #27-05:

Craig S. Bukhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 28-05, Offered by: Dr. Schutzer

Title: Publicly Available Qualification Data

The TGDC recognizes that public records laws are standard practice in many arenas where public trust and/or safety are at stake. To the extent possible, qualification test reports should be released to the public as evidence that the qualification process was responsibly executed. To handle those cases where release of the entirety of the reports is problematic, the TGDC requests that NIST recommend standards on qualification data to be provided, called a "Public Information Package," that will set out requirements on the information that must be publicly available and published.

I hereby certify the accuracy of Resolution #28-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 29-05, Offered by: Dr. Schutzer

Title: Ensuring Correctness of Software Code

Volume 1, Section 4.2 and Volume 2, Section 5.4 of the 2002 VSS defines coding standards, as well as a source code review to be conducted by Independent Testing Authorities (ITAs) to enforce those coding standards. These coding standards are a means to an end, the end being an ITA evaluation of the code's correctness to a high level of assurance. The TGDC requests that NIST:

1. Recommend standards to be used in evaluating the correctness of voting system logic, including but not limited to software implementations, and
2. Evaluate the 2002 VSS software coding standards with respect to their applicability to the recommended standards, and either revise them, delete them, or recommend new software coding standards, as appropriate.

I hereby certify the accuracy of Resolution #29-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #30-05, Offered by: Dr. Schutzer

Title: Quality Management Standards

Volume 1, Sections 7 and 8 and Volume 2, Section 7 of the 2002 VSS require the vendor to follow certain quality assurance and configuration management practices and require the ITA to conduct several audits and documentation reviews to ensure that they were followed. These are a means to ensure that the vendor is capable of following responsible software engineering practices. The TGDC requests that NIST:

1. Review and analyze quality management standards to determine their relevance to voting systems (and their security), and
2. Recommend changes to the VSS quality assurance and configuration management sections based on the findings above.

I hereby certify the accuracy of Resolution #30-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 31-05, Offered by: Dr. Schutzer

Title: Maintenance of the VSS

All specifications contain ambiguities that are discovered during testing of implementations. Similarly, all specifications contain requirements that can be subject to multiple, equally defensible interpretations. The TGDC requests that NIST draft a strategy for maintenance of the VSS, which would address the issuance of interpretations of the VSS, the resolution of disputes, and the continuous improvement and revision of the VSS.

I hereby certify the accuracy of Resolution #31-05:

Craig S. Burkhardt, Parlimentarian

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution #32-05**, Offered by: Dr. Schutzer

7 Title: Sharing Information and De-Qualification of Voting Systems

8

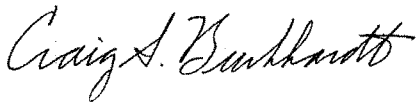
9 1. The TGDC recognizes that no conformance assessment process is perfect.
10 Systems with non-conformities, even serious ones, can be granted qualification,
11 only to cause problems at the precinct level after they are deployed. When a
12 serious flaw is discovered in one jurisdiction, other affected jurisdictions should
13 be informed. At present, however, there is no process to de-qualify voting
14 systems that are discovered, after qualification has been granted, to have serious
15 problems. The TGDC requests that NIST define a process and specification for
16 sharing information amongst jurisdictions concerning qualified voting systems
17 that have been discovered to have non-conformities, present problems and known
18 vulnerabilities.

19

20

21 I hereby certify the accuracy of Resolution #32-05:

22



Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #33-05, Offered by: Dr. Schutzer

Title: Glossary and Voting Model

The 2002 VSS does not contain a voting model depicting the entire voting process. The current Glossary of Terms needs revision. The TGDC requests that NIST update the 2002 VSS Glossary of Terms and develop a Voting Process Model that incorporates terminology from the revised Glossary to clearly depict the entire voting process and to determine where a voting system fits into this larger process model.

I hereby certify the accuracy of Resolution #33-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution #34-05**, Offered by: Dr. Schutzer

7 Title: Assessment Papers on Recommendations for Future Work

8

9 Separate from the immediate work effort to update the 2002 VSS specifications, the
10 TGDC recognizes the need to develop a series of assessment papers that address important
11 issues related to the interrelation of Election Management and VSS systems. These issues
12 are likely to lead to future specifications for VSS systems. The TGDC requests that NIST
13 develop assessment papers that discuss the need for:

14

15 1. Standards and tests to support future systems built to support election day
16 verification of voters,
17 2. Standards for formatting of registration information (possibly using Extensible
18 Markup Language-- XML) to make it easier for states to share information,
19 3. Tests and standards to validate compensating process, procedures and fixes that
20 address known VSS deficiencies,
21 4. Better ways to integrate the voting registration process with the rest of the voting
22 process,

5. Standards and tests to support systems that implement absentee voting,
6. Standards and tests to support systems that implement multi-day voting,
7. Standards specifying what existing election information format standards (or portions thereof or variations thereof) are acceptable for use in voting systems,
8. Standards supporting voter interactions and issues of correctly capturing indications of voter choice, and
9. Standards supporting the interrelationship of polling place operation with usability, accessibility and privacy.

I hereby certify the accuracy of Resolution #34-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #35-05, Offered by: Dr. Rivest

Title: Wireless

The TGDC has considered the advisability of using wireless technology within voting systems from a security perspective. It has concluded that, for now, the use of wireless technology introduces severe risk and should be approached with extreme caution. The TGDC directs NIST to research and draft standards documents for the use of wireless communications devices in voting systems.

I hereby certify the accuracy of Resolution #35-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #01-04, Offered by: Dr. Harding

Three subcommittees shall be established to gather and analyze information. Subcommittees shall be comprised only of TGDC members. Subcommittees shall propose resolutions to the TGDC on best practices, specifications and standards. Subcommittees shall be named:

i) Security and Transparency,

ii) Human Factors and Privacy, and

iii) Core Requirements and Testing.

I hereby certify the accuracy of Resolution #01-04:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #02-04, Offered by: Mr. Berger

The Chair shall survey the interest of TGDC members, and thereafter appoint the members and chairs of the subcommittees.

I hereby certify the accuracy of Resolution #02-04:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #03-04, Offered by: Dr. Harding

Resolutions prepared by the subcommittees shall be considered by the TGDC. Resolutions adopted by the TGDC shall be referred to NIST for technical assistance and editing. Upon return from NIST, the TGDC shall review the resolutions to confirm they conform to its intent.

I hereby certify the accuracy of Resolution #03-04:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #04-04, Offered by: Ms. Davidson

Adopted resolutions and appropriate explanatory materials comprise the "first set of recommendations" mandated by the Help America Vote Act.

I hereby certify the accuracy of Resolution #04-04:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, July 9, 2004

Resolution #05-04, Offered by: Mr. Craft

The TGDC shall recommend to the EAC that they expedite making currently certified voting software available to the National Software Reference Library as soon as possible.

I hereby certify the accuracy of Resolution #05-04:

Craig S. Burkhardt, Parlimentarian

1 **U.S. Election Assistance Commission**

2 **Technical Guidelines Development Committee**

3 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

4

5 **Resolution #01-05,** Offered by: Ms. Quesenbery

6 Title: Work Product Instructions to Staff of National Institute for Standards and

7 Technology (NIST)

8

9 The TGDC intends to consider and adopt resolutions during its January 18 and 19, 2005

10 meeting. Each resolution will make certain findings or conclusions. The resolutions will

11 also request specific technical assistance from NIST.

12

13 At the conclusion of the meeting, the TGDC Chair will sort the adopted resolutions by

14 priority. Priority is to be given to resolutions and requests for technical support that can

15 result in work product that will form a part of the April initial recommendations of the

16 TGDC.

17

18 Generally, NIST staff members with subject matter expertise will be instructed by the

19 TGDC Chair and his designates to conduct further research and inquiry, gather and

20 evaluate existing standards or standards-like materials which apply to the resolution, and

21 revise such materials or draft new standards or standards-like materials. In many cases,

22 there may be few existing standards materials related to a resolution. In those instances,

1 NIST staff is generally instructed to gather, review, revise, or write relevant standards-
2 related materials. The NIST technical assistance work product will be categorized as pre-
3 decisional materials, and should be provided directly to members of the TGDC for their
4 review.
5
6 If, in the course of providing technical assistance, NIST staff discovers significant errors
7 in an adopted resolution or otherwise concludes that to continue providing technical
8 assistance is unwise, technical assistance should be temporarily halted. Such reasons to
9 halt technical assistance may also include discovery that a requested task is technically
10 infeasible, or that the scope of the request exceeds the capabilities or legal authorities of
11 NIST. NIST shall immediately bring the matter to the attention to the TGDC Chair, who
12 will consult with the sponsor of the resolution and the Chair of the applicable
13 subcommittee. If the TGDC Chair, subcommittee Chair and resolution sponsor agree that
14 the request for technical assistance to NIST should be revised, they shall have authority to
15 do so. In such cases, a new or revised request for technical assistance shall be issued to
16 NIST in writing, with copies to all TGDC members. In such cases, the sponsor of the
17 relevant adopted resolution shall examine whether the adopted resolution should be
18 reconsidered or revised during a subsequent meeting of the TGDC. If so, the
19 parliamentarian should be consulted to draft the appropriate resolution materials.
20
21 If, in the course of providing technical assistance, NIST staff discovers an alternative
22 approach that logically fits into the scope of an adopted resolution, NIST staff may

develop and present the alternate approach. In such cases, NIST staff shall also provide the technical assistance specified in the resolution.

If, in the course of providing technical assistance, NIST staff discovers duplicative or conflicting resolution findings or requests for technical assistance, the TGDC Chair shall be consulted. In such instances, the TGDC Chair shall consult the Chair of the applicable subcommittee and the sponsor of the resolution(s) for clarification. The Chair shall then issue a new written request for technical assistance to NIST and provide copies to TGDC members.

During subsequent meetings of the TGDC, members of the TGDC may consider, amend and adopt the technical assistance work product. Such adopted technical assistance work product will be appended to the appropriate resolution, and will form a portion of the initial recommendations to the Election Assistance Commission.

All work products to be considered by NIST shall be received no later than five working days prior to public meetings by members of the TGDC prior to consideration.

I hereby certify the accuracy of Resolution #01-05:

Craig S. Bickhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #02-05, Offered by: Ms. Quesenbery

Title: Accessible Voting Systems

The TGDC has concluded that standards for voting systems should include requirements for accessibility that meet the HAVA requirement for accessible voting by incorporating the latest available accessible technology. Further, the TGDC directs NIST to research and draft standards based on, but not limited to, existing requirements from the VSS 2002, IEEE P1583 draft 5.3.2a, *ADA Accessibility Guidelines (ADAAG)*, 36 CFR Part 1194 (section 508) and other relevant usability and accessibility guidelines and federal laws and regulations in order to develop future accessibility requirements for voting systems.

I hereby certify the accuracy of Resolution #02-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #03-05, Offered by: Ms. Quesenbery

Title: Human Factors and Privacy of Voting Systems at the Polling Place

The TGDC has considered the issue of what is required to ensure both access to the voting system by voters with disabilities, and usability and privacy for all voters. It has concluded that usability, accessibility, and privacy are functions of both the system used to vote and the environment of the polling place. The TGDC directs NIST to research and draft guidance on the deployment and configuration of systems in the polling place to ensure usability, accessibility, and privacy. These guidelines should be combined with the accessibility standards described in Resolution #02-05 or the standards described in Resolution #04-05.

I hereby certify the accuracy of Resolution #03-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution #04-05,** Offered by: Ms. Quesenbery

7 Title: Human Factors and Privacy Requirements for Capturing Indication of a Voter's

8 Choice

9

10 The TGDC recognized the need for voting system requirements to include human factors

11 and privacy requirements for capturing indication of a voter's choice based on current

12 research. These requirements should be specified so that systems can be evaluated for

13 meeting the requirements. Unclear specifications, such as "intuitive", "unambiguous", or

14 "meaningful" should be avoided. Further, performance-based standards are preferred over

15 specific design standards, because performance standards address the total effectiveness of

16 the system more directly than do design standards and typically they are not technology

17 specific. The TGDC directs NIST to:

18

19 1. Create an outline of the human factors and privacy requirements related to

20 capturing indication of a voter's choice,

21 2. Write draft human factors and privacy standards based on this outline by using

22 existing requirements from the VSS2002, IEEE P1583 draft 5.3.2a, *ADA*

Accessibility Guidelines (ADAAG), 36 CFR Part 1194 (section 508).

and other relevant usability and accessibility guidelines and regulations,

3. Identify areas where further requirements development for capturing indication of a voter's choice is needed, noting when performance-based usability standards are possible, and
4. Write all requirements so that they are testable and the tests themselves can be conducted either by inspection by a person with reasonable knowledge of systems, user interface design, and accessibility or by performance-based usability tests with clear, repeatable protocols.

I hereby certify the accuracy of Resolution #04-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution #05-05,** Offered by: Ms. Quesenbery

7 Title: Human Performance-Based Standards and Usability Testing

8

9 The TGDC has concluded that voting systems requirements should be based, wherever
10 possible, on human performance benchmarks for efficiency, accuracy or effectiveness,
11 and voter confidence or satisfaction. This conclusion is based, in part, on the analysis in
12 the NIST Report, *Improving the Usability and Accessibility of Voting Systems and*
13 *Products* (NIST Special Publication 500-256). Performance requirements should be
14 preferred over design requirements. They should focus on the performance of the interface
15 or interaction, rather than on the implementation details. When it is not possible to specify
16 performance requirements (whether because conformance tests cannot be formulated or
17 because they would be too onerous to implement), testable, implementation-neutral design
18 requirements should be used. Conformance tests for performance requirements should be
19 based on human performance tests conducted with human voters as the test participants.
20 The TGDC also recognizes that this is a new approach to the development of usability
21 standards for voting systems and will require some research to develop the human
22 performance benchmarks and the test protocols. Therefore, the TGDC directs NIST to:

1. Create a roadmap for developing performance-based standards, based on the preliminary work done for drafting the standards described in Resolution # 4-05,
2. Develop human performance metrics for efficiency, accuracy, and voter satisfaction,
3. Develop the performance benchmarks based on human performance data gathered from measuring current state-of-the-art technology,
4. Develop a conformance test protocol for usability measurement of the benchmarks,
5. Validate the test protocol, and
6. Document test protocol and benchmarks so that an independent test laboratory can reproduce the testing.

I hereby certify the accuracy of Resolution #05-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

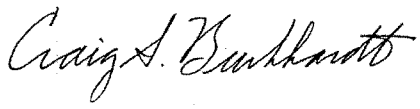
Resolution #06-05, Offered by: Ms. Quesenbery

Title: Accommodating a Wide Range of Human Abilities

The TGDC recognizes that there is a wide range of human abilities. The voting population includes not only people with specifically identified disabilities but also the aging population, language minorities, and people with other special needs. A goal of voting system standards should be to accommodate, as much as possible, this wide range of abilities to ensure the greatest usability and accessibility of those systems. This approach is sometimes called "universal design" or "universal usability." In drafting standards, the TGDC directs NIST to:

1. Consider what accommodations to voter abilities can be included in the standards for all voting systems, using currently available technology, and
2. Develop principles for "universal design" based on existing best practices and other guidelines or standards such as 36 CFR 1194 (Section 508), to guide future standards development to aid in updating the voting system standards.

I hereby certify the accuracy of Resolution #06-05:



1 _____
2 Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #08-05, Offered by: Ms. Quesenbery

Title: Usability Guidance for Instructions, Ballot Design, and Error Messages

The TGDC has considered the issue of what is required to improve usability and reduce errors for capturing indication of a voter's choice. It has concluded that usability is a function of the machine used to vote as well as other characteristics of the voting system such as the instructions for voters and poll workers, ballot design, and machine error and help messages. Research and best practices in the areas of plain language design, form design, and usability are potentially relevant to such voting system characteristics. The TGDC directs NIST to research and draft guidelines and standards where possible to improve the usability of instructions, ballot design, and error and help messages in all formats used. These guidelines should be combined with the standards described in Resolution # 4-05.

I hereby certify the accuracy of Resolution #08-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #09-05, Offered by: Ms. Quesenbery

Title: General Voting System Human Factors and Privacy Considerations

Errors in the voting process are due to human error and the TGDC notes many examples from recent elections to support this statement. While requirements for capturing indication of a voter's choice is the primary area for human factors and privacy standards development, the TGDC recognizes that all proposed requirements that involve human interaction with the voting system should address any possible human factors and privacy implications. Therefore, the TGDC directs NIST to review all proposed requirements, assess which requirements involve user interaction, and perform the evaluation or research needed to ensure that basic usability, accessibility, and privacy is maintained when these requirements are applied to a voting system.

I hereby certify the accuracy of Resolution #09-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 10-05, Offered by: Ms. Quesenbery

Title: Usability of the Standards

The TGDC recognizes the importance of the usability of the voting systems standards. Independent testing laboratories, election officials, and vendors need to understand these standards and also understand how a system is tested for conformance to the standards in order to have confidence in voting systems that pass the conformance tests. Therefore, to the extent possible, the voting system standards should be written in plain language, understandable by both test experts and by voting officials who are not experts in human factors or design.

I hereby certify the accuracy of Resolution #10-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 11-05, Offered by: Ms. Quesenbery

Title: Availability of Voting Machines for Validating Benchmarks and Conformance Test Protocols

The TGDC is aware that the definition and validation of human performance benchmarks and human performance test protocols as described in the NIST Report, *Improving the Usability and Accessibility of Voting Systems and Products* (Special Publication 500-256), requires testing on a set of typical, state-of-the-art voting machines. The TGDC directs NIST to work with the EAC to determine a means to acquire such voting machines and then make them available to enable NIST to perform the work described in Resolution #05-05.

I hereby certify the accuracy of Resolution #11-05:

Craig S. Burkhardt, Parlimentarian

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution #12- 05**, Offered by: Dr. Rivest

7 Title: Voter Verifiability I

8

9 The TGDC has considered the various means by which a voting system allows a voter to
10 verify that his or her vote was captured as the indication of the voter's choice. All voting
11 systems must provide such means, as stated in HAVA 2002 section 301(a)(1)(A)(i). Such
12 voter verification means can be categorized as either "direct," as with optical scan or a
13 machine-generated paper ballot, where the voter can directly examine the representation
14 of his ballot, or "indirect," as with many touch-screen Direct Recording Electronic-- DRE
15 machines, where the voter can only verify the "fundamental representation" of his ballot
16 through the assistance of intervening hardware and/or software.

17

18 For voting systems that create more than one representation of the voter's ballot (such as
19 one electronic and one on paper), the TGDC interprets the HAVA language to require that
20 such voter verification must apply to the representation (to be called here the fundamental
21 representation) that is used for the initial vote tabulation.

22

The TGDC therefore finds it useful to divide voting systems into two categories: those (class DV) where each voter is presented a fundamental representation of his ballot that the voter may directly verify, and those (class IV) not in class DV.

The TGDC has concluded that voting systems in class IV or DV must be held to significantly different security requirements, including different constraints on voting system development, different requirements for system documentation, and different testing to mitigate the different risks associated with each type of voting system.

The TGDC therefore requests that NIST perform research and develop standards documents that:

1. Clarifies the distinction between class DV and class IV voting systems as may be necessary,
2. Elaborates and defines the different requirements to be satisfied by class DV and IV voting systems, and
3. Reviews methods of verification accessible by voters with disabilities.

I hereby certify the accuracy of Resolution #12-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 14-05, Offered by: Dr. Rivest

Title: Commercial Off-The-Shelf Software ("COTS Software")

The TGDC has considered the advisability of using Commercial Off-The-Shelf Software ("COTS Software") within voting systems, from a security perspective. It has concluded that, generally speaking, the use of COTS software introduces excessive and unnecessary risk and should be avoided, while specific well-motivated exceptions to this rule may be required upon occasion. The TGDC directs NIST to research and draft standards documents requiring:

1. That the use of COTS software within voting systems is not allowed unless it meets specific exceptional conditions, and
2. That the criteria for exceptions shall be drafted by NIST.

I hereby certify the accuracy of Resolution #14-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 15-05**, Offered by: Dr. Rivest

7 Title: Software Distribution

8

9 The TGDC has concluded that, generally speaking, the manner in which software is
10 loaded onto voting systems is not governed by existing standards, and that it is a
11 significant security issue, that warrants more stringent controls. It is important to know
12 which software has been installed on a voting system, when the software has been
13 installed, and from what sources. Without strict controls on these processes, noncertified
14 software could be loaded onto voting systems, with potentially disastrous results. The
15 TGDC directs NIST to research and draft standards documents requiring:

16 1. That the distribution of any software to voting systems shall only be performed by
17 means of physically distributed "read only" or "write once" media, including
18 software such as:

19 (a) Operating system required software,

20 (b) Updates and patches,

21 (c) Data files, and

22 (d) Voting system software.

2. That the electronic transmission of any software to voting machines via networks or wireless introduces extreme risk and should be approached with extreme caution,
3. That the software will include an integrity check (such as a digital signature that positively authenticates its source) that must be verified as part of the process of loading the software, and
4. That the record of loading the software will be written permanently to a system audit log kept in write-once memory.

I hereby certify the accuracy of Resolution #15-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 16-05, Offered by: Dr. Rivest

Title: Setup Validation

The TGDC has considered the issue of electronic voting machine setup validation and has concluded that current standards and practice need substantial improvement in this regard. A setup validation method ensures that a voting system contains the authorized software, contains no unauthorized software, and is in the proper initial state. The TGDC requests NIST to do research and develop standards:

1. That specify the characteristics of acceptable setup validation methods (such as, for example, that the setup validation method may not modify the state of the system nor require the execution of any software currently on the system), and
2. That require each voting system submission to specify an acceptable setup validation method.

I hereby certify the accuracy of Resolution #16-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 17-05**, Offered by: Dr. Rivest

7 Title: Testing

8

9 The TGDC directs NIST to research and draft standards documents requiring testing of
10 voting systems that includes a significant amount of open-ended research for
11 vulnerabilities by an analysis team supplied with complete source code and system
12 documentation and operational voting system hardware. The vulnerabilities sought should
13 not exclude those involving collusion between multiple parties (including vendor insiders)
14 and should not exclude those involving adversaries with significant financial and technical
15 resources.

16

17

18 I hereby certify the accuracy of Resolution #17-05:

19

20 Craig S. Bukhardt
21 Craig S. Bukhardt, Parlimentarian
22

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 18-05**, Offered by: Dr. Rivest

7 Title: Documentation

8

9 The TGDC has concluded that it is critical to the security of voting systems that they be
10 documented thoroughly according to a well-specified set of documentation criteria.
11 Proper documentation is an important and essential part of the input for security
12 evaluation. Voting systems that are not well documented may also be less secure in that
13 poor specification of features and operation can facilitate incorrect operation and improper
14 responses to error conditions and other unexpected events.

15

16 This documentation should address all areas of voting system design, architecture,
17 features, controls, and operational modes, and also include recommended management
18 and maintenance procedures. The documentation should specify exactly the operational
19 context of the voting system and all assumptions made affecting the system and how it is
20 operated. It should include all security requirements for operation of the system, including
21 manual, noncomputerized procedures. Particular attention should be paid to processes and

1 procedures that reduce security vulnerabilities throughout the entire voting preparation,
2 balloting, counting and audit phases.
3
4 The TGDC directs NIST to research and draft standards documents requiring voting
5 system documentation, to include but not be limited to such items as:
6 1. Voting system design information including source code and discussion of built-in
7 or procedural protections from NIST Special Publication 800-53 such as for:
8 (a) System and information integrity,
9 (b) Identification and authentication,
10 (c) Access control,
11 (d) Audit and accountability, and
12 (e) System and communications protection.
13 2. Specifications of compatible software or equipment (i.e., operating systems,
14 utilities),
15 3. Evaluation-related documentation including:
16 (a) Risk assessment information,
17 (b) Results of certification, accreditation, and security assessments, and
18 (c) Contingency planning recommendations.
19 4. Operational procedures including:
20 (a) Modes and procedures for each mode,
21 (b) Maintenance procedures,
22 (c) Media protection and media loading procedures, and

(d) Recount procedures.

5. Awareness and training recommendations,
6. Incident response procedures, and
7. Other information deemed relevant to a security evaluation of the proposed voting system.

The issues of [a] redundant representations of ballots created by the voting system and [b] how recounts of these ballots are to be handled are particularly important. Voting systems that store redundant representations of a cast vote must include, as part of their specification, a detailed description of how such representations may be used in counting votes and recounting votes. The description must also specify what procedures, if any, may (or must) be used to detect discrepancies between the various representations, and how such discrepancies may be resolved.

I hereby certify the accuracy of Resolution #18-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 21-05**, Offered by: Dr. Rivest

7 Title: Multiple Representations of Ballots

8

9 Voting systems may create one or more electronic representations of ballots in addition to
10 any paper record produced.. For example, three redundant electronic copies may be made,
11 for reliability purposes. As another example, the scanning of an op-scan ballot may create
12 another, electronic, representation of the ballot. A number of issues are related to the use
13 of multiple representations (both electronic and paper) that are in some cases relatively
14 new and not completely identified or understood, and in other cases need uniform
15 terminology and procedures. These issues include:

16

17 1. Preventing, detecting, and handling disagreements between the representations, in
18 the rare event that they should occur,
19 2. Converting between representations, and ensuring that ballots are not multiply
20 converted and counted,
21 3. Use of multiple representations in fraud analysis,
22 4. Authenticity of the representations,

5. Marking of ballot representations with unique identifiers, (if and when possible to do so while preserving voter privacy), and
6. Conversion to/from standard formats.

The TGDC has concluded that further research is advisable in identifying potential problems associated with voting systems that use multiple representations of ballots, and in identifying best approaches for handling such problems. The TGDC thus requests that NIST perform such research and draft standards documents that reflect NIST's determination of the best practices and best approaches for handling these problems.

I hereby certify the accuracy of Resolution #21-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 22-05**, Offered by: Dr. Rivest

7 Title: Federal Standards

8

9 Voting systems, while specialized in their purpose, often have many aspects in common
10 with general information technology (IT) systems. Guidelines, standards, and testing
11 programs have been developed for U.S. Government civilian IT systems, typically
12 utilizing ANSI-approved and other voluntary consensus standards, including the
13 Cryptographic Module Validation Program (CMVP) for analysis and testing of
14 cryptographic modules and software, and the National Voluntary Laboratory
15 Accreditation Program (NVLAP) for accreditation of testing laboratories. NIST is
16 currently creating an information security standard (mandated by the Federal Information
17 Security Management Act, specifically, *Recommended Security Controls for Federal*
18 *Information Systems, draft* NIST Special Publication 800-53) affecting all federal
19 government systems. This draft standard specifies the inclusion and proper use of
20 security-related protections affecting many areas of IT system design and development,
21 management, testing, and operations -- all of which have relevance to voting systems.

1 This and other similar efforts by the U.S. Government have the benefits of having been
2 developed in a public process and having had successful track records with industry.
3
4 The TGDC therefore requests that NIST examine existing federal guidelines, standards,
5 and testing programs, and ANSI-approved and other voluntary consensus standards for
6 security in general information technology systems for their relevance and applicability in
7 standards to voting systems, and to draft standards documents that follow such prior
8 guidelines, standards, and programs when possible and where appropriate.
9
10
11 I hereby certify the accuracy of Resolution #22-05:
12
13 Craig S. Burkhardt
14 Craig S. Burkhardt, Parlimentarian
15

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 23-05**, Offered by: Dr. Rivest

7 Title: Common Ballot Format Specifications

8

9 The TGDC has concluded that the adoption of standard formats for election-related
10 information, such as ballots (both blank and filled-in), has many positive benefits and is
11 worth pursuing. An example of such a standard is OASIS Election Markup Language
12 (EML) Version 4.0, which is an XML-based specification. The TGDC therefore requests
13 NIST to do research and develop standards documents:

14 1. Specifying what existing election information format standards (or portions thereof
15 or variations thereof) are acceptable for use in voting systems, and
16 2. Requiring that voting systems use such standards wherever possible.

17

18 NIST's evaluation of existing election information standards shall consider fitness for
19 function under existing election codes, security, ease and cost of implementation, and
20 other factors judged relevant by NIST. If no existing election information format
21 standards (or portions thereof, or variations thereof) are judged by NIST, upon its detailed

examination, to be acceptable for current use, then NIST should so recommend, and this resolution will have no net effect at this time.

I hereby certify the accuracy of Resolution #23-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 24-05, Offered by: Dr. Schutzer

Title: Conformance Clause

The conformance clause of a standard provides the answers to the important question: what may conform and how? A conformance clause defines, at a high level, what is required of implementers of the specification. The clause may specify minimal requirements for certain functions, as well as extensibility, optional features, and alternative approaches and how they are to be handled. The TGDC requests that NIST draft a conformance clause section for the Voting System Standard.

I hereby certify the accuracy of Resolution #24-05:

Craig S. Burkhardt, Parlimentarian

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution # 25-05**, Offered by: Dr. Schutzer

7 Title: Precise and Testable Requirements

8

9 For qualification of voting systems to be consistent, fair, and meaningful, it is necessary to
10 control variability in the conformance assessment system. Both the requirements to be
11 tested and the methods by which they are to be tested must be specified with appropriate
12 precision. The TGDC requests that NIST:

13

14 1. Conduct a review and analysis of the requirements in the 2002 VSS to ensure that
15 they are sufficiently precise to enable meaningful testing,
16 2. Include the requirements from the 2002 VSS that are already precise and testable,
17 3. Write testable requirements for those requirements that are not sufficiently
18 precise,
19 4. Expand the testing standards in the VSS to specify test methods of those
20 requirements,
21 5. Update the requirements where appropriate during the review, such as reliability
22 and accuracy specifications, and

6. Adopt, to the extent that NIST determines it is advisable, commonly used equivalent commercial test methods.

I hereby certify the accuracy of Resolution #25-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 26-05, Offered by: Dr. Schutzer

Title: Uniform Testing Methods and Procedures

For consistency and transparency of voting systems testing, and to increase the public trust and confidence in the testing of voting systems, it is necessary that the same set of testing methods and procedures be used by each testing organization. The TGDC requests that NIST draft guidance for how to develop a public set of test methods and procedures.

I hereby certify the accuracy of Resolution #26-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 27-05, Offered by: Dr. Schutzer

Title: Non-Conformant Voting Systems

A provision in the 2002 VSS allows qualification of voting systems that do not conform to the requirements. [*"Any uncorrected deficiency that does not involve the loss or corruption of voting data shall not necessarily be cause for rejection."*] If there are requirements that are frequently unmet by qualified systems, these requirements should be reviewed for possible elimination. The TGDC requests that NIST review the text of the 2002 VSS to determine if the provision for qualification of voting systems that do not conform to the requirements should be deleted.

I hereby certify the accuracy of Resolution #27-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 28-05, Offered by: Dr. Schutzer

Title: Publicly Available Qualification Data

The TGDC recognizes that public records laws are standard practice in many arenas where public trust and/or safety are at stake. To the extent possible, qualification test reports should be released to the public as evidence that the qualification process was responsibly executed. To handle those cases where release of the entirety of the reports is problematic, the TGDC requests that NIST recommend standards on qualification data to be provided, called a "Public Information Package," that will set out requirements on the information that must be publicly available and published.

I hereby certify the accuracy of Resolution #28-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 29-05, Offered by: Dr. Schutzer

Title: Ensuring Correctness of Software Code

Volume 1, Section 4.2 and Volume 2, Section 5.4 of the 2002 VSS defines coding standards, as well as a source code review to be conducted by Independent Testing Authorities (ITAs) to enforce those coding standards. These coding standards are a means to an end, the end being an ITA evaluation of the code's correctness to a high level of assurance. The TGDC requests that NIST:

1. Recommend standards to be used in evaluating the correctness of voting system logic, including but not limited to software implementations, and
2. Evaluate the 2002 VSS software coding standards with respect to their applicability to the recommended standards, and either revise them, delete them, or recommend new software coding standards, as appropriate.

I hereby certify the accuracy of Resolution #29-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #30-05, Offered by: Dr. Schutzer

Title: Quality Management Standards

Volume 1, Sections 7 and 8 and Volume 2, Section 7 of the 2002 VSS require the vendor to follow certain quality assurance and configuration management practices and require the ITA to conduct several audits and documentation reviews to ensure that they were followed. These are a means to ensure that the vendor is capable of following responsible software engineering practices. The TGDC requests that NIST:

1. Review and analyze quality management standards to determine their relevance to voting systems (and their security), and
2. Recommend changes to the VSS quality assurance and configuration management sections based on the findings above.

I hereby certify the accuracy of Resolution #30-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution # 31-05, Offered by: Dr. Schutzer

Title: Maintenance of the VSS

All specifications contain ambiguities that are discovered during testing of implementations. Similarly, all specifications contain requirements that can be subject to multiple, equally defensible interpretations. The TGDC requests that NIST draft a strategy for maintenance of the VSS, which would address the issuance of interpretations of the VSS, the resolution of disputes, and the continuous improvement and revision of the VSS.

I hereby certify the accuracy of Resolution #31-05:

Craig S. Burkhardt, Parlimentarian

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2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution #32-05**, Offered by: Dr. Schutzer

7 Title: Sharing Information and De-Qualification of Voting Systems

8

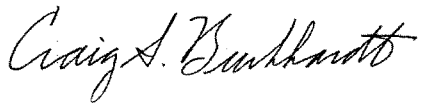
9 1. The TGDC recognizes that no conformance assessment process is perfect.
10 Systems with non-conformities, even serious ones, can be granted qualification,
11 only to cause problems at the precinct level after they are deployed. When a
12 serious flaw is discovered in one jurisdiction, other affected jurisdictions should
13 be informed. At present, however, there is no process to de-qualify voting
14 systems that are discovered, after qualification has been granted, to have serious
15 problems. The TGDC requests that NIST define a process and specification for
16 sharing information amongst jurisdictions concerning qualified voting systems
17 that have been discovered to have non-conformities, present problems and known
18 vulnerabilities.

19

20

21 I hereby certify the accuracy of Resolution #32-05:

22



Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #33-05, Offered by: Dr. Schutzer

Title: Glossary and Voting Model

The 2002 VSS does not contain a voting model depicting the entire voting process. The current Glossary of Terms needs revision. The TGDC requests that NIST update the 2002 VSS Glossary of Terms and develop a Voting Process Model that incorporates terminology from the revised Glossary to clearly depict the entire voting process and to determine where a voting system fits into this larger process model.

I hereby certify the accuracy of Resolution #33-05:

Craig S. Burkhardt, Parlimentarian

1

2 **U.S. Election Assistance Commission**

3 **Technical Guidelines Development Committee**

4 *Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005*

5

6 **Resolution #34-05**, Offered by: Dr. Schutzer

7 Title: Assessment Papers on Recommendations for Future Work

8

9 Separate from the immediate work effort to update the 2002 VSS specifications, the
10 TGDC recognizes the need to develop a series of assessment papers that address important
11 issues related to the interrelation of Election Management and VSS systems. These issues
12 are likely to lead to future specifications for VSS systems. The TGDC requests that NIST
13 develop assessment papers that discuss the need for:

14

15 1. Standards and tests to support future systems built to support election day
16 verification of voters,
17 2. Standards for formatting of registration information (possibly using Extensible
18 Markup Language-- XML) to make it easier for states to share information,
19 3. Tests and standards to validate compensating process, procedures and fixes that
20 address known VSS deficiencies,
21 4. Better ways to integrate the voting registration process with the rest of the voting
22 process,

5. Standards and tests to support systems that implement absentee voting,
6. Standards and tests to support systems that implement multi-day voting,
7. Standards specifying what existing election information format standards (or portions thereof or variations thereof) are acceptable for use in voting systems,
8. Standards supporting voter interactions and issues of correctly capturing indications of voter choice, and
9. Standards supporting the interrelationship of polling place operation with usability, accessibility and privacy.

I hereby certify the accuracy of Resolution #34-05:

Craig S. Burkhardt, Parlimentarian

U.S. Election Assistance Commission

Technical Guidelines Development Committee

Resolution adopted by the TGDC at their plenary meeting, January 18 and 19, 2005

Resolution #35-05, Offered by: Dr. Rivest

Title: Wireless

The TGDC has considered the advisability of using wireless technology within voting systems from a security perspective. It has concluded that, for now, the use of wireless technology introduces severe risk and should be approached with extreme caution. The TGDC directs NIST to research and draft standards documents for the use of wireless communications devices in voting systems.

I hereby certify the accuracy of Resolution #35-05:

Craig S. Burkhardt, Parlimentarian

The CHAIRMAN. Commissioner Soaries.

Mr. SOARIES. Mr. Chairman, we are going to defer to the committee members and allow the rest of our time to be spent answering questions.

The CHAIRMAN. Thank you. Mr. Martinez?

Mr. MARTINEZ. Thank you, Mr. Chairman. I will defer as well to the statements by our Chair and Vice Chair and look forward to questions.

The CHAIRMAN. Thank you. With that, let me just begin again by thanking all of you for being here. In the written comments, it includes data about provisional voting in 2004 that includes the numbers of provisional ballots cast and counted in each State as well as the corresponding acceptance rate. I noticed that Ohio's acceptance rate, my State, was nearly 80 percent, which appeared to put Ohio's rate in the top five, I think, of all the States. Is that correct on that, top five?

Ms. HILLMAN. Yes.

The CHAIRMAN. As one might expect, the provisional ballot data shows variances amongst the States. A number of factors could potentially affect how many provisional ballots were cast in a State and what the acceptance rates were. Factors such as whether a provisional ballot had to be cast in the assigned precinct in order to be counted or not, whether a statewide voter registration database was in place, the extensiveness of a State voters' education and poll worker training program, the rigorousness of a State's verification standards. Have you been able to discern any patterns so far regarding how those factors that I mentioned impacted the provisional ballot numbers and the acceptance rates in other States?

Ms. HILLMAN. Mr. Chairman, I am afraid that we have not been able to discern that yet. We are in the process of analyzing the data that has been submitted. We have received data from 41 States. We don't know if the other States will submit the information, but we expect that we should have that analysis completed by late March or early April.

The CHAIRMAN. I am going to be brief here because I want everybody to be able to get questions. Let me just go over a couple of things very quickly. I think also looking at the military issue and disenfranchisement there, I know we didn't hear a lot this election as we did in 2000, but I was in Afghanistan and in the Gulf. I talked with hundreds of our men and women in uniform. It was a great concern before the election. I know the Defense Department had a project, and they canceled that. So I think there are a lot of issues that even though we are not hearing about them, I would still like to know about our men and women who as we speak are sacrificing and giving of their lives for democracy; I would still like to know what was the success or not of those votes.

Also, the staff, some of whom are here, Republican and Democrat, recently went over, and I went with them, to Lebanon, Egypt and Turkey and we talked to expats there. One lady, I think it was in Turkey, had mentioned that the Virginia Board of Elections e-mails her the ballot. She can then print it out and fill it out and mail it back in. I have never heard of that, but we had heard different cases. And other people couldn't get their ballots.

Also, I think we need to look at American citizens overseas and how that works. I know the embassies have really been trying to intensify that program.

I hope just because we are not hearing about the military that we will be able to explore how well that went. Have you heard anything? I should ask you that.

Mr. DEGREGORIO. Mr. Chairman, you brought this issue up in our first hearing last summer. We did issue a best practices report for military and overseas voting in September to encourage the States in this area. The Commission will be collecting data and is collecting data right now on voting by military and overseas voters. This is an important issue to us because we know that—we want to make sure that every voter, including those overseas, have the opportunity to participate in elections.

We have heard some anecdotal data from different States that there were problems. Certainly States that have late primaries and get their ballots out late to our citizens overseas is problematic in those States. The best practices encourages States to do something about that.

Once we collect our data, we will have some reports to give you and more information that I think will be helpful to improve this process in future elections.

The CHAIRMAN. Thank you.

One other question I have would be about the new guidelines that will be issued this year, perhaps maybe in the spring or early summer. A lot of States are delaying purchasing their new voting equipment until these guidelines are released. Do you believe that such States are allowing themselves sufficient time to come into compliance with the voting systems by next year?

Mr. MARTINEZ. Mr. Chairman, HAVA requires a framework, if you will, for the EAC to work under with regard to the evaluation and the review and even the updating, if you will, of the current voting system standards, or guidelines as they are called actually, in the Help America Vote Act. We inherited the voting system standards that were promulgated by the FEC prior to the creation of the EAC, the Election Assistance Commission. So what we are trying to do is to work in a very timely fashion as is required by HAVA to do our due diligence in working with our partners, with NIST over at the Department of Commerce, with the Technical Guidelines Development Committee which was created by HAVA to ensure that we can review the current standards, identify gaps that exist in the current standards, and put forward a work product in as timely a fashion as possible to the States so that they can have these guidelines when they make procurement decisions about voting systems.

Those deadlines are happening for States. It is upon the States now so that the work product that we need to produce is needed by States. There is no question about that. We are working again with our partners, TGDC, NIST, as well as State and local governments, to try to produce a work product as quickly as possible, but in keeping with the framework that was developed under the Help America Vote Act.

The CHAIRMAN. And I think it is incumbent upon us—as officeholders I am going to put out a letter in Ohio to also clarify how

this process works, and if they have questions, they should call the EAC. There are a lot of myths in my own State. We are sitting on top of $132 million that is sitting there.

Now, local boards of elections, Democrat and Republican members, in my own county, Bill Shubert is a great election official down there, a Democrat; Frankie Lee Karnes—I can name good Democrats and Republicans—she is a Republican. They pursue the fact from the fiction, but there is a lot of information in my own State that is put out there that we didn't provide enough money. We do have $900 million to go. But Steny Hoyer and the Speaker and the Minority Leader Ms. Pelosi and a lot of people, Chairman Young, the previous Chair of Appropriations, have worked very hard to get to that $3 billion. But when officials, including in my own State, say, well, the Feds didn't pay for everything, well, we had an agreement, $3.9 billion fully funds, and we are going to get that other $900 million. But my own State is sitting there with $132 million sitting.

I would hope that a lot of these myths are worked through by our officials with the local boards, and that way we can get beyond that and try to come into compliance so that States like mine are not going to head into a train wreck.

With that, I am going to ask one brief question, if you want to comment, and move on to our Ranking Member. On February 6 of 2005, the National Association of Secretaries of State passed a resolution urging Congress not to fund or authorize the EAC beyond the 2006 Federal elections. Any reaction to that?

Ms. HILLMAN. Yes. But before responding, I would just like to call to the committee's attention that on pages 7 and 8 of the testimony, there is a chart that shows where each State is with respect to voting system procurements. Some have gone ahead. Some are in the process. And some, as you have indicated, have not yet begun.

With respect to the resolution that was passed by the National Association of Secretaries of State, I suppose the best way to describe our feeling about it is that it is a curious thing that was done. We all have worked, the four Commissioners, in government, whether at the local, State or Federal level. We are aware of the inherent and sometimes healthy tension between the States and the Federal Government and where the line begins and where it ends. I have observed through the work that I did on renewal of the Voting Rights Act in 1982 and on passage of motor voter in 1992 pushback from some of the States not wanting to continue under the oversight of the Federal Voting Rights Act and wanting to resist Federal imposition of the components of the Motor Voter Act. This is, I must say, the first time that I have experienced the shove personally.

So it doesn't surprise us that the States would feel that way, the sentiments that were expressed in the resolution. We absolutely respect the right of the secretaries of state to express their opinion as they see fit. What was surprising to us was the way that it was done. We have had many occasions throughout the past year to meet with secretaries of state, to meet with the secretaries of state individually, to interact with NASS as an organization. They serve on our Standards Board, members do. Secretaries of state serve on

our Board of Advisers. They have all along the way had opportunities to comment on and respond to the various documents that we have issued, the best practices.

Up until Sunday of this week, we did not hear from NASS that it was so concerned about the sentiment expressed in its resolution that it was preparing to take that kind of action. Even as late as last week, we were with several secretaries of state at a 2-day meeting of our Standards Board. We were on the agenda of the NASS midwinter conference for several weeks, if not months, so they knew we were coming. And I guess we thought that there would have been a dialogue, an exchange, between the Election Assistance Commission and NASS. If following the dialogue they felt that they wanted to proceed with such a resolution, well, then so be it, we would have respected that. But we did not have that opportunity to have the discussion.

There are two specific allegations, if you will, that have been made. One was about the EAC performing—overstepping its boundaries and beginning to act as a regulatory agency. We know that our record is complete, and any examination of any of our documents, our meetings, our hearings would indicate that we have, in fact, gone out of our way to respect HAVA. We are guided by the Help America Vote Act. We know the language guidance and guidelines were very carefully crafted and put into HAVA for specific reasons.

The one area where we do have regulatory authority, the National Voter Registration Act, is, in fact, one area that we haven't been able to get to yet in part because of the overload of work and the lack of resources, but it certainly is something we will get to this year.

And then the other was a suggestion that we apparently publicly stated we didn't know when the draft guidelines concerning the voting system standards would be available. Again, the record will show at various of our meetings, the Technical Guidelines Development Committee meetings and other correspondence, we have always said we fully expected to receive the draft standards from the Technical Guidelines Development Committee and the National Institute of Standards and Technology by the end of March, early April, which is the 9-month process prescribed in HAVA, that there is another 90-day process that we have to go through, again prescribed in HAVA, but that draft standards would be available in the spring, and that we would work very hard to complete that process and issue the first set of guidelines in the summer of this year.

The CHAIRMAN. I just wanted to note, and we will move on to the Ranking Member—I just wanted to note when we crafted HAVA, Congressman Hoyer and I were very, very careful to not create an EPA of elections where people were grabbing rules every 3 hours and throwing them out, turn the light switches on at the Board of Election in Belmont County at 9 o'clock, or the Secretary of State has to have a yellow tie or a blue blazer, square footage. We were really careful not to do that. On the other hand, we made it very clear, too, that we weren't going to create something that was toothless; that we were going to create something that had some teeth in it.

So I think the balance and the blend that we wrote into that law after a long process of consideration, I think it worked, and there are some standards and some things that EAC can do. So I think it was a good blend, and I haven't seen anything that you have done that has exceeded that or altered from the course.

Ms. HILLMAN. Mr. Chairman, if I might say, we also recognize that we have a tremendous amount of work to be done under HAVA. We fully intend to do that. We look forward to working with NASS as an organization and the secretaries of state throughout the country as we have done for the past year.

The CHAIRMAN. Thank you.

We have been joined by the gentlelady from California Congresswoman Lofgren. Welcome.

I will yield to our Ranking Member.

Ms. MILLENDER-MCDONALD. Thank you so much, Mr. Chairman. Indeed we are joined by this outstanding, extraordinary woman out of the great State of California, Congresswoman Zoe Lofgren. I am told that she has come to us unofficial yet, but to be official soon, and so with unanimous consent, can she participate in the committee? And we welcome her.

The CHAIRMAN. Welcome.

Ms. MILLENDER-MCDONALD. Mr. Chairman, when I was here on the committee in the 108th Congress, I was the only woman, female, sitting on this dais, and now there are two who are joining us. I must say, help is on the way.

Ms. LOFGREN. If I may, Ranking Member, Mr. Chairman, I am unofficial as of yet, but I did tell our Leader that I would be happy to serve. I very much look forward to working with the committee on the important issues that face us.

The CHAIRMAN. Welcome. We are glad to have you.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman.

I was indeed very touched by your annual report that I received and your title Preparing America to Vote. That is just an extraordinary, impressive title of your report, as you prepare America to vote. We are so absolutely privileged to have the Election Assistance Commission to provide the type of leadership for that to take place.

I agree with the chairman that when they developed HAVA, they carefully ensured that it would not become a regulatory agency. This is indeed what you have not done, and you have tiptoed around all of that to circumvent you from doing that. We appreciate that.

As I looked at your report, in light of your having 10 months later coming on, required by HAVA to get started, the major accomplishments that you have had are really very telling of the hard work you have already done, and that is including the release of HAVA funding to the States, local election administrators, enhance their processes, various guidance and outreach projects to assist State and local governments in implementing HAVA mandates. And you have developed a comprehensive best practice that has been shared by the secretaries of states. I think that is to be commended. You have disbursed approximately $1.3 billion in HAVA's fund to 44 States, so that that will give the election officials across

the country the opportunity to implement the various administrative mandates contained in HAVA.

And so we applaud your work and applaud the many times that I called on you, especially when the previous Chair—the Reverend Dr. Soaries was the Chair, every time I called, he says, I am coming, yes, what is it? But he provided the type of leadership to train those persons who were asking to be poll workers.

I am thankful to you for providing the funding through grant to the California University of Long Beach. They have done a tremendous job.

My question to you, to any of you who wish to answer, the chairman touched on ensuring voter system standards and guidelines. Given that 44 States asked for waivers on implementing these guidelines for the 2004 elections, what progress have States made toward achieving this mandate in 2006?

Mr. DEGREGORIO. Thank you, Ms. Ranking Member.

As you see, and you will see in our report, many States have worked towards achieving the HAVA requirements that will come into play in 2006, but the fact of the matter is that many—most States are in the process of complying with the element of developing a statewide voter registration database and procuring election systems, voting systems. Many States implemented systems in 2004 on a partial basis. The State of Pennsylvania was 60 percent compliant with the statewide voter registration database. They made an attempt to see how it would work. But there is a lot of work to be done.

This Commission is committed to provide guidance on the statewide voter registration database and, as our Chair has stated, to provide voting system guidelines by this spring, the initial draft set, and then by this summer the final set. We think that that will help the States as they move in the process of complying with HAVA, as they purchase new equipment and comply with the statewide voter registration database requirements.

Ms. MILLENDER-MCDONALD. So that gives them adequate time, then, to set up for the 2006 election, do you think?

Mr. DEGREGORIO. As a former election official, I know that you like to have more time than that because you want to certainly—whenever you introduce a new system, there is voter education that has to come into play to make sure voters are educated about a new system, and you want to make sure that your poll workers are trained. We have found in many States that have gone to electronic voting, that some of the older poll workers just don't want to deal with it, and they quit. That is why we made a major effort in 2004 to help recruit new poll workers. The program you spoke about in your district was one that helped get younger people involved. I think that effort needs to be continued and certainly enhanced in 2006 as the States move towards new equipment and dealing with the new equipment on a sustainable basis.

Ms. MILLENDER-MCDONALD. In turning to your chart in your presentation here today, it states here that in Alaska there were 96.6 percent provisional ballots counted. Conversely, in Hawaii, it was only 6.9 provisional ballots counted. The variances in the percentage of ballots counted from State to State is reflective of a number of factors including the definition of the jurisdiction. Is

that one of the core factors in this type of variances? And what can we do to ensure that we close that gap, if any?

Mr. MARTINEZ. I will be happy to address that, Congresswoman. I think the Chair actually spoke about this as well a while ago, and that is the various factors that we see in implementing provisional voting.

Many States, at least 17 States, had no experience prior to the passage of this Federal law with implementing any type of provisional voting, whether it was called challenge ballots or affidavit ballots which many States had prior to HAVA making this a requirement for all Federal elections across the country. So I think you had many factors, just inexperience in implementing a new procedure.

What we are seeing is that the business of election administration becomes more complex every election cycle for various factors. New technology, as the vice chairman just said a little while ago, makes it a little bit more complicated. So you have to have poll workers that are better trained or at least retrained pretty much for every election cycle when changes are made. Provisional voting was one major change. But you also had States that had a lot of experience in provisional voting as well, like California, that had been doing provisional voting for a number of years so it wasn't new.

So what I think we are seeing, we have to go and take a look at what happened and take a look at those States that implemented this law for the first time and find out what their experience was; go back to States that have been doing this for a while, talk to them and see how it went in their experience. In other words, I think what we will find is that States that had clear and uniform procedures, written procedures, and did an adequate job of informing their voters, here is how we are going to conduct this business of provisional voting, probably had a better success rate, if you will.

If your voters were informed, if you decided in your State that you were going to count only those provisionals that were cast in the correct precinct, then it is incumbent upon you to make sure that your voters know this is how we do it in this jurisdiction, and also to take the necessary step, Congresswoman, to make sure your poll workers are trained and have the resources they need, that they are trained on your written policies and procedures, and that they have the resources they need to redirect voters appropriately if and when that time comes.

Ms. MILLENDER-MCDONALD. That is key. As the gentlewoman said out of Michigan, the former secretary of state, that there are still some concerns about using a provisional ballot outside of your jurisdictional precinct. Again, education is so critically needed, and uniformity is needed in terms of all of these secretaries of states being on the same page.

Mr. DEGREGORIO. Congresswoman, if I may just add to my colleague's comments, though. Another element that I think is at play here is when we see high percentages of people where their ballots were legitimately counted, that indicates that they were legitimately registered to vote. I think what happened this year in some States, particularly battleground States, is that we saw groups

bringing in thousands and tens of thousands of voter registrations at the last minute into the election office, some of these registrations going back 6, 7, 8, 9 months past where people had actually registered in February but not turned in until October. I think election officials had trouble managing that, that last-minute surge of voter registrations. They didn't get them on the rolls, but they voted provisionally, and they found that ballot, they found that registration, and so that was counted.

So you saw those high numbers in some States, particularly battleground States, and I think part of the issue here that we have to deal with is how do we deal with groups that registered voters not getting registrations in on a timely basis.

Ms. MILLENDER-MCDONALD. That is very true, because I heard from some of my election officials that there was a barrage of registration affidavits coming in, and they really didn't have the staff to process this in a timely fashion. So those are some of the other issues.

A couple of more questions I have. What is EAC's position on developing voluntary voting system standards that cover voter-verified paper trails?

Mr. SOARIES. Just before answering that question, let me also note that Hawaii had only about 300 or more provisional votes cast, and so in addition to those factors, it should be analyzed as to why they had so few. I plan to volunteer to my colleagues to go to Hawaii and look into that personally.

Ms. MILLENDER-MCDONALD. I will join you there as well.

Mr. SOARIES. My colleagues can go to Alaska.

The voter-verified paper trail and voter-verified audit trail issue is one that has been hotly discussed and has become one of the leading issues in voting for the future. On the front end it is a security concern. Those who are concerned about securing the ballot so that the voter knows that the person for whom they voted is the person for whom the vote was actually cast is critical. And then the issue of auditability. How do we audit an election where there is not a piece of paper available after the election is over for recount purposes and other?

What EAC recognizes is that it is not the intent of HAVA, nor is it the responsibility of the Federal Government, to dictate to States what kind of equipment to purchase. Those States that are using direct recording electronic devices, the touch screen voting machines, have the right to use those machines. It is our responsibility through our standards-setting process to ensure that whatever equipment is used coheres with standards of usability, of performance and design.

Having said that, I went to Nevada to observe the first election where the DRE with voter-verified paper trail technology was being used. I brought back to the Commission my observation that it is still our responsibility to ensure that standards are in place so that those States that are increasingly mandating the use of that kind of technology do so with the guidance of guidelines that are established at the Federal level.

And so in summary, it is not our responsibility to prefer any particular type of technology. However, it is our mandate to put in place standards that govern their use so that when people use

them, they will know that the font size is correct, that the paper is the right kind of paper, that the sequencing of the names is such that you can protect voter confidentiality.

There are a number of issues that are appropriately addressed by standards. My understanding of my colleagues is that we are not prepared to mandate any particular type of equipment, but we are working hard on our standards process.

Ms. MILLENDER-MCDONALD. So your standards will pretty much be rather generic to fit all types of equipment? Is that it?

Mr. SOARIES. We have charged the Technical Guidelines Development Committee to bring us a recommendation inclusive of standards for that particular type of equipment to ensure that any State or jurisdiction that wants to use it can use it with the assistance of the guidelines that we offer.

Ms. MILLENDER-MCDONALD. I have got you.

The last question I want to raise is one that the chairman brought up, this resolution that was passed by the National Association of Secretaries of State. In a memo that I read, they were asking that the duties that were assigned to you be perhaps transmitted to the National Institute of Standards and Technology. Yet in a very cursory view of that group, it doesn't seem like it is a compatible one, but can you tell me, what are the duties with this technology agency as opposed to what you are doing and if there is any compatibility or lack of compatibility?

Ms. HILLMAN. The National Institute of Standards and Technology, which is a part of the U.S. Department of Commerce, is working with us specifically on the research and study and development of standards for voting systems, for the equipment, the hardware and the software systems. That is specified in HAVA.

One would surmise from the resolution that what the secretaries of state are saying, they recognize that process should continue, but that would be the only part of the Help America Vote Act that NIST would be able to follow through on, and that would be the system standards. The issue of auditing, receiving State reports, sending out requirements payments, providing guidance on the very long list of issues that Congress has put under Title III of the act and those other kinds of issues are not something that are within the expertise of NIST.

Mr. DEGREGORIO. If I may add, Madam Ranking Member, I think one of the beauties of HAVA in setting up the EAC was that we are a bipartisan commission, and that the TGDC and NIST does its work for the EAC. And that to make sure that whatever guidelines we come up with are done on a bipartisan manner to serve the whole country works well, I think, for this country to make sure that it is not just one agency of the Federal Government doing this, but that it is vetted through an agency such as ours to make sure that people have trust and confidence in the guidelines that they are producing.

Ms. MILLENDER-MCDONALD. I think that is absolutely key.

Ms. HILLMAN. If I could also note that I believe the resolution referred to the work could also be completed by the State and local election officials who make up the Standards Board. The Election Assistance Commission has a 110-member Standards Board, two people from each State. There is balance so that you have got 55

State representatives, 55 local representatives, and they each must be from a different party so that there is some balance there.

But this is a board. It is a Federal advisory board. It is governed under the Federal Advisory Committee Act. It has a nine-person Executive Committee that it just elected last week, but the staffing of that Standards Board is provided by the Election Assistance Commission.

Ms. MILLENDER-MCDONALD. So saying all of that, it certainly seems to me that it was a little premature in that resolution being put out, given that you have yet a lot of work to be done that has been mandated by HAVA for you to do, and you have done an extraordinary job. So I thank you so much, and I thank the chairman for bringing that resolution to our attention because it certainly at this point, in my view, is a little premature. Thank you, Mr. Chairman.

The CHAIRMAN. Gentleman from Michigan.

Mr. EHLERS. Thank you, Mr. Chairman.

I am very disappointed in the resolution of the secretaries of state. But during the writing of the bill, we had similar problems in dealing with the directors of elections, the secretaries of state and a lot of other people and local officials; basically wanted the Federal Government to keep their hands off. And we worked diligently to try and work with them and establish a system that was fair to everyone concerned. I would hope that you would get together with the secretaries of state soon in trying to resolve the problem because we need everyone working together.

Since I was involved in writing the technical standards, I am very interested in how your relationship with NIST has worked and whether they have been helpful to you in the process, and has this been a fruitful partnership?

Ms. HILLMAN. It has been a fruitful partnership, although admittedly, the Election Assistance Commission has had to do due diligence, if you will, to help NIST see the way that the work could be done within the 9 months prescribed by HAVA. I think NIST felt a bit overwhelmed by the size of the task. And particularly that portion of the time that NIST has been working on this, we had funding uncertainties.

We started the technical guidelines development committee in July of 2004 on a gamble that the 2005 budget would provide the funding we needed. And, in fact, Congress did recognize the critical need for this funding; however, because we were under a continuing resolution, we didn't know for certain what the funding would be until December.

NIST worked with us. And the committee did have meetings. By January, they were ready to adopt resolutions. We, the Election Assistance Commission, have been very clear and, in fact, very firm with NIST and the Technical Guidelines Development Committee that the work must be done within the 9 months.

Mr. EHLERS. I appreciate that. And frankly, NIST got caught in a bind not of their own making. It was a travesty that the Congress did not provide the funding for them and, in fact, cut their funding in other areas and made it very, very difficult. I appreciate that they were able to do what they were able to do.

Ms. HILLMAN. We are also appreciative that they did undergo a staff change. Dr. Bement did leave in the middle of this as did one of their other senior staff. So they did have some staff changes.

Mr. EHLERS. I would like to comment on the paper trail issue. Representative Holt could not stay, but he is submitting a bill that he would like me to cosponsor requiring development of a paper trail. And there are many questions involved in this, and I don't know what aspects you are looking at. A paper trail is not a magic answer. I could very easily program a computer to record false information and yet print out precisely what the voter put in and print that out for the voter's satisfaction, but yet record a different result in the memory of the computer, and as long as there is no audit later on, that would stand.

The real issue—there is plenty of opportunity for fraud in voting and also opportunity for electronic fraud, and I think everybody should be aware of that and the efforts should be concentrated on preventing the fraud in the first place and not just a paper trail. I think a paper trail is nice for audit purposes, but I am a little concerned that we might mislead people into thinking that, well, if there is a paper trail, then automatically everything is okay. That alone doesn't guarantee it. So that is one reason I insisted on very strong technical standards to ensure the verifiability of the electronic record, the accuracy of the electronic record and the reproducibility of the electronic record in addition to whatever paper trail we might develop.

It is unfortunate that there are high school students who are more capable of hacking the computer than the poll workers generally, and I am not saying this is likely to happen, but this is an opportunity for fraud to occur. And I just wanted to point that out. I don't know if any of you wish to react to that comment.

Mr. SOARIES. I will, Congressman. I think you are exactly right. When I was in Nevada, it was clear that many of the people who voted with the paper trail never even looked at the paper, which further opens the door of opportunity for electronic fraud. We do the math and calculate the likelihood of people to look at the paper.

However, in Nevada, we found that the confidence level of voters, because of their perception of security, increased because there was paper. We think it is our job to do the proper research to really vet all of the issues, to inform the States and the policymakers, and, again, to set those standards, including technical standards, that will ensure that there are both standards for paper trail technology, but more importantly, standards for security in the electronic devices.

Mr. EHLERS. Absolutely. Thank you very much. I am sorry. I am late for another committee meeting, but I thank you very much for being here, and I appreciate your work. You have had a tough couple of years, and I think this last election went off remarkably well. And there are always going to be some glitches, but I appreciate your efforts and hope that you will continue to do the same work.

Mr. SOARIES. You urged to—we started—as the Chair mentioned, on Monday we met with NASS and spent most of our time listening to their concerns. But as Yogi Berra said, he gets along with his wife—we get along together even when we are not together. While NASS and EAC are not together on this particular issue, we will

work together as the Chair has committed and work through this and continue the process of election reform.

Mr. EHLERS. I think it is safe to say on the part of the Congress that the Election Assistance Commission is not going away, so everyone has to work together.

The CHAIRMAN. The gentleman from Pennsylvania.

Mr. BRADY. Just for my own knowledge, how many voting machines are there, do you know, in the United States of America? I mean, I am in the First District in Pennsylvania that encompasses Philadelphia and a couple of suburbs. I have four different voting machines. So you have to have a nightmare ahead of you with provisional ballots, designing them, allowing the State to do it. It is really tough. And I recognize that you do a heck of a job under some tough circumstances.

Mr. DEGREGORIO. There are probably a couple of dozen individual type of voting devices out there throughout the country that vendors sell to jurisdictions throughout the country. And there is nearly half a million of individual devices that are used by voters throughout the country on election day in a Presidential election. So it is quite complicated.

The CHAIRMAN. Gentleman from California Mr. Doolittle.

Mr. DOOLITTLE. Thank you, Mr. Chairman, and I appreciated the opportunity to meet yesterday with a couple of our Commissioners, and appreciate the insight that you gave me. At that time I expressed a preference for a paper trail, but I would like to revise that. What I really want is the ability to audit what went on, and maybe there are some ways other than a paper trail to do that. Would any of you care to comment on alternatives to a paper trail in terms of how you can track what actually happened?

Mr. MARTINEZ. I will make a quick comment. And the Vice Chairs also have been tracking this issue very closely. Certainly, there are. There are jurisdictions in this country that have had experience not just in one or two election cycles, but for a very long time in using electronic voting systems; the newer versions, touch screens. But there have been jurisdictions using them. In some of those jurisdictions, a chief election official, secretary of state, will step forward and say there is no real outcry from the voters of this State to move toward a paper verification, if you will. In other words, the management processes, the protocols that we have in place to ensure the integrity and the accuracy of our voting systems satisfies the voters in this State, generally speaking, that our systems are accurate.

There are ways to achieve the accuracy and the integrity we all demand of our voting systems. You have jurisdictions that have experience, and then you have others that perhaps are newer to some of the technology that, for various reasons, including what our former Chair just articulated, and that is simply for the purpose that they believe in their State the voters demand an added layer of security, an added layer of verification.

And some of those States like California, I think the legislature has taken a step to mandate a paper verification by 1/1/06. And you have some secretaries of state who have done it on their own through regulatory authority and have taken that step as well, so they see paper as that added security.

There are different ways, I think, to achieve the same result. I would join my former Chair and colleague in saying we don't want to get bogged down at the EAC right now with the question of whether we should mandate this or that. What we want to do is deal with the reality of the situation. The reality of the situation is we have NIST that is taking a look at current voting system standards, identifying gaps, one of which I think we all agree is security, and let us deal with the reality which is, in some States, mandated already. The question of whether you are going to have paper or not has already been settled by a legislature, by a chief election official. Let us give the assistance that those States need to ensure that those components have integrity and accuracy. And those are the types of standards you are trying to achieve at some point later this year.

Ms. HILLMAN. Congressman, you did raise a very important point about the auditability of the systems, the touch screen and DRE systems, and that is a matter that our Technical Guidelines Committee and NIST are looking into for us.

Mr. DOOLITTLE. Thank you. As you know, we have had some severe problems in California with the secretary of state. He has now resigned, and I understand that you are auditing the use of the funds out there, which I very much appreciate and think an audit needs to go forward despite the resignation. I think it will shed some light on not only what has happened in California, but potential ways the system is perhaps being abused. It may exist elsewhere. I wonder if you could comment on how this audit will be conducted.

Ms. HILLMAN. This year will be the first year that the Election Assistance Commission will undertake one of our significant responsibilities, which is receiving reports from the States. And because of the lateness of our cycle, we will be receiving reports on expenditures under both Title 1 and Title 2 of the Help America Vote Act.

So we have been providing guidance about the kinds of information that needs to be reported to us. Upon reviewing those reports and looking at the single-State audits that will be available from the various States, we will make a determination as to whether we think there is anything in the report that warrants our further consideration of a special audit.

At our meeting in January, we did adopt policy and procedures for special audits, and then we did vote to audit California based on information that we received through the California State auditor's office and that report. Our next step, we have to obtain the services of an auditing entity. We are considering two options. One is another Federal agency with experience auditing Federal grants, payments, requirements, or an outside firm. And as soon as we have that in place, we will begin the audit, and we will be looking at an audit of both financial and program compliance.

We are informed by the California State auditor's report, and we will be informed by the single-State—I believe I am using the correct reference—single-State audit that will also come out. What we want to do is take a look at a much bigger percentage of the expenditures than did the California State audit report. So I am ex-

pecting that we will have the audit completed sometime late spring or early summer.

Mr. DOOLITTLE. Thank you.

The CHAIRMAN. Gentlelady from California.

Ms. LOFGREN. As a temporary member, I believe I am not able to participate.

The CHAIRMAN. If you would like to.

Ms. LOFGREN. Listening carefully to the paper trail argument and the level of confidence, I will just advance an opinion that part of what our mission here to do is to assure the integrity of the vote, but also to build confidence on the part of voters. And the ability to conduct a recount, I think, is part of that confidence building. Whether or not a recount is ever conducted, that it could be, I think, builds public confidence, and for that measure alone ought to be included.

Is NIST addressing the issue of the multiplicity of technologies and the possibility of a paper trail and conforming to that multiplicity of technologies?

Mr. DEGREGORIO. Yes, they are. We gave that charge to the committee when it was first instituted in July of last year, and just recently the committee passed resolutions to deal with this issue and to make sure that if a jurisdiction or a State mandated a paper trail, that there would be requirements and guidelines for the use of that paper trail, which would include the auditability and any kind of recount that the system may have to go through after an election.

Ms. LOFGREN. As a brand new member, I will limit my question to that, Mr. Chairman, and as I continue to be a member, I will have more.

Mr. SOARIES. Congresswoman, there is a very active movement of technologists and voting vendors who are pursuing a track of voter verifiability through an audit trail that does not include paper, and I think the exploration of that emerging technology will offer States options who are seeking to do precisely what you described, and that is to have maximum auditability and at the same time an option to using paper.

Ms. LOFGREN. Mr. Chairman, at some point, maybe the committee has already done this, but I think it would be very informative if we could arrange at some time to have some of these machines displayed for us along with some geeky types who hack into them so we might have an understanding. It is one thing to sit here and get a report, but I think it would be very informative if at some point we could arrange that. Just a suggestion.

The CHAIRMAN. We can do that. When we were talking about the voting machines, we had a forum here a couple of years ago and had a lot of different machines. I think we had it for 2 days, and House staff came.

Gentlelady from Michigan.

Mrs. MILLER. Thank you, Mr. Chairman.

I would like to revisit, I think, what was your original question, and I also serve on the Armed Services Committee, so I have a complete consternation about our military members whether or not they are able to vote in a timely fashion. And I believe that the Department of Defense has let a contract to a vendor to develop a sys-

tem whereby the military would be able to download their ballots, although I am not sure with technology being where it is today. It could be years away, obviously, for a complete ballot to be downloaded. I was wondering as we were talking about standards if you are aware of this contract and to what degree the EAC was involved, if at all, with developing these standards. And in consultation with the DOD for such a contract, it would seem there would be an appropriate agenda for your responsibilities.

Mr. DEGREGORIO. Thank you, Congresswoman.

We are certainly aware of the agency that was given this contract, Omega Technologies. However, we were not brought into the picture, nor were we asked our opinion on the process that they used to select the company. And there was some controversy involved, because it was felt that it was let under the Department of Defense, and perhaps there were some partisan contributions given by this company in the process that tainted any work that they did.

I certainly suggested to the Pentagon that anything that they do in this area be bipartisan, and I suggested to them that perhaps they contract in the future with some local election entity in the Washington, D.C., area; there are plenty of them around here that are bipartisan, so partisanship wouldn't come into play when we are dealing with votes that may come in that people may see.

So we certainly hope that in the future we have the opportunity to work with the Federal Voting Assistance Program and the Pentagon to improve this process to keep the controversy to a minimum and to keep voter participation by our military men and women and voters overseas to a maximum.

Mrs. MILLER. I appreciate that. That was very candid to say so, and I would be interested to follow up myself on the way it is going, because it does have great potential, obviously, to be able to use that kind of technology. I think people on the submarines, people have an opportunity to download.

Shifting gears, but continuing to talk about the standards, and I am, as we are all, about this resolution that NIST passed this last week. And the next panel, I see some of my former friends, secretaries of state out here, will want to address it. But it is my understanding that the resolution that was passed was overwhelming. I think it was 22 out of 24 secretaries that were in attendance. It was a large amount. But perhaps some of the reason, part of the reason that they might have some consternation and passed a resolution is because they don't have the standards yet, for instance, on the statewide election voter registration list. And I know it was talked about in your testimony that you are looking perhaps at summer. Someone said summer. And I know the chairwoman also mentioned the term "interactive." I have a couple of questions.

First of all, I don't know how we define interactive. I would like to know your best definition of what that means. Interactivity obviously is going to be a critical element of that. And as you are developing your standards, what is your criteria status thus far; if there is anything we should know in regards to that. And it would seem—are you looking at some of the existing States' systems?

And not to keep going back to Michigan, but we all have our personal perspectives, so I have to mention in Michigan we developed

the qualified voter file many years ago before HAVA came along. And in Michigan—I don't know that we are unique in the Nation, but we have a very decentralized system. In most States where you have the county clerk maintaining the voter registration rolls, in Michigan it is every clerk, every village clerk, township clerk, city clerk, to the extent that we had over 1,700 municipalities maintaining their respective voter registration files and then to meld them all into a statewide computerized voter registration list was sporting; very challenging, but it worked out great.

And our system is interactive in that it is Web-based. There also is—and I think there are a number of States that do this as well, that the secretaries not only have the elections, but they have the DMVs. So we were able to construct that system built off of the driver file and the State identification file. And that particular system I will note was noted in the Ford-Carter Presidential Commission as a national model. I am sure there are other national models.

And I only say that by way of as you are developing your criteria for your standards, what is happening with that, and are you looking at these other systems? Because I am sure the secretaries have great consternation about developing a system now. They spend a lot of money on some system, and then in the summer or whenever come to find out it is not a system that is meeting your standards. So I ask you that.

Ms. HILLMAN. Thank you for the question, Congresswoman. I think there were three or four dynamic components to your question. One is with respect to the statewide voter registration databases, we don't develop standards on that, but rather we would issue guidance. And HAVA gives us some requirements as to how we do the guidance, which would include the development of the draft guidance, hearings, publication in the Federal Register for a period of time for comment. So it is guidance on that part of the Title 3 requirements that we would issue.

We did at our December 2004 meeting have presentations from four States about their experiences with their statewide voter registration databases. We note that, I believe, it is 17 States have their statewide voter registration databases operational. Some States have begun that process. And the purpose for holding that first hearing, if you will, it wasn't really a hearing, but we did a panel presentation, was to gather early information to get a sense as to the amount of work that we would have to undertake to come up with the guidance. And some States—we had Michigan, Kentucky, South Carolina and North Carolina, and Kentucky and Michigan both have had longtime experience with this. At least one State said they had to go back to the drawing board—I think it was Kentucky—and start over again. They couldn't do that again now, but that as they were working through their system, they realized that some parts of it weren't working.

The guidance that we will provide is voluntary, but we draw from the real experiences that elections administrators have had with the system. We know there are discussions between State election officials and locals about the—I won't say ownership of the databases, but the locals have their database in the States.

With respect to interactive and real-time, that is one of the big challenges that we will have to give definition to that in a way that provides good guidance, but doesn't at all impede on any State's ability to set up the type of system that it can afford and manage over the long haul that will service its locals, that the locals will be able to use. For some jurisdictions this is going to be a major undertaking. It is going to require database, no hardware, and so on and so forth. Some States shy away from purchasing over-the-counter software, if you will, and want their own setup. Most States don't have what Michigan has in place, and that is the Department of Motor Vehicles and the elections responsibilities in one place. It has to be coordinated. Some States are having to work with Social Security Administration, you know, to figure out how the files will be able to talk to each other.

We recognize that is a huge undertaking, and we appreciate the States wanting to receive the guidance from us. As you probably have picked up in earlier testimony, unfortunately, we started way behind the eight ball with respect to not only our being appointed late, but not having a budget in 2004 that permitted us to do any research last year. And we do not have the in-house staff capacity to do all the research. We will have to contract some of this out, because in the fiscal year appropriation, Congress did cap us at having 22 full-time staff. So we are having to put together the capacity to do the research.

So under ideal conditions, this guidance would have gone out last year. We do believe we are going to be able to provide guidance in sufficient enough time that even for a State that starts the initial planning—in my remarks earlier, I talked about, you know, changes and improvements take thoughtful planning and time. So as the thought and planning process is going on, our guidance will be in time for any State to be able to revise, correct and do whatever before final implementation and still have several months to be able to do a trial run, if you will, before January 1, 2006.

Mr. DEGREGORIO. If I may add, Congresswoman, because I know that under your leadership as secretary of state of Michigan, you worked closely with the 1,500 city clerks. I had the opportunity before the election to go to Troy, Michigan, and visit with Tony Bartholomew, the city clerk there, to see how that system worked, because I know that when HAVA was drafted, the State of Michigan system was an element and a very important element as they drafted the statute.

As you recognized, as the former secretary of state, there is always a tension between the local election officials and the State, and in some States the tension is quite high on this issue, and we recognize that. And the Commission wants to try to help the States and locals to get together to partner and make this work as Congress intended.

In the State of Illinois, the State board of elections and the election officials are miles apart. The State board of elections want all the registrations to come to Springfield, and the 86 county clerks and elections said no. And we want to provide answers for them, some guidance. They have to work it out themselves. We are not going to mandate anything that they do, we are going to try to pro-

vide some interpretation that helps them come together to make this work.

Mrs. MILLER. I know I am out of time here, but let me suggest then as you are developing guidelines, even though you can't mandate it, a critical element—and this is not inherent to Michigan, it is anywhere—is that the same address be used for your voter registration as it is for your driver's license. We passed a piece of legislation in Michigan to that effect, and I know some other States have.

When we fired up the qualified voter file in Michigan and melded all of the lists together, we eliminated almost 10 percent of our list. We had about 7 million, and we eliminated about 700,000 names. And when we passed that legislation, we really fine-tuned the system, and there should be no reason why—I mean, whatever address you want to use, okay, but you could only have one address in the system. That is something I would suggest strongly that you put in your guidelines; otherwise you are never going to have a clean list.

Ms. HILLMAN. Thank you for that comment. And we do recognize that once these databases are in place, there will be, as you said, a 10 percent cleanup of the rolls, if you will. There will be significant cleanup of the rolls, and then will come into question the purging process. So the transparency of the State's activities to develop this database, keeping the information flowing to the groups and individuals that work on voter registration so that they understand if they are told there was a 15 percent purge once the database was done, then we will understand that, and we won't see the kind of reaction to this as we saw with provisional voting.

We didn't know a year ago that provisional voting was going to be the subject it was, but we can anticipate now that when any voter group hears that a significant portion of the voting registration list of the State was purged, they are going to want to know who, what, when, where, why, how. Part of our guidance will be encouraging States' transparency of process, frequent communication with the groups, and ongoing information, and a visible written plan that explains step by step what they are doing and why they are doing it.

The CHAIRMAN. I want to thank the panel. We are talking about secretaries of state coming out here, and that has been bandied about. But my Secretary of State Tim Blackwell was the first person who picked up the phone and called me with HAVA, and we appreciated that. And Secretary of State Thornburgh is here. He was the first one on the spot, too. Secretary of State Priest.

So I didn't want to make a bashing statement. I will say probably also to defend NASS in the sense from their perspective, and it doesn't have as much to do with you all, somebody doesn't like something, there is a bill to amend HAVA and another bill to amend HAVA. And there were so many of them before the election that I think probably in the minds of secretary of states, you know, how far is this thing going to go that is kind of overdone, even though there are good issues and important issues. But there was such a proliferation of bills, and that is probably a signal from them to us also.

With that, I want to thank you for your great work and your time today.

The CHAIRMAN. And the next panel, speaking of secretaries of state, are here, and appreciate their patience and will move right on to introducing the panel.

I want to thank the secretaries of state for being here and for your patience. We have Rebecca Vigil-Giron, the New Mexico secretary of state and also the current president of the National Association of Secretaries of State; Ron Thornburgh, who is no stranger to the committee, and who is the Kansas secretary of state; Chet Culver, the Iowa Secretary of State; and Todd Rokita, the Indiana Secretary of State. And appreciate your time. And we will start with our Secretary of State from New Mexico.

STATEMENTS OF REBECCA VIGIL-GIRON, NEW MEXICO SECRETARY OF STATE; RON THORNBURGH, KANSAS SECRETARY OF STATE; TODD ROKITA, INDIANA SECRETARY OF STATE; AND CHET CULVER, IOWA SECRETARY OF STATE

STATEMENT OF REBECCA VIGIL-GIRON

Ms. VIGIL-GIRON. Good morning, Chairman Ney, Congresswoman Millender-McDonald and distinguished members of the committee. Thank you for your invitation to address the committee today, and I bring special greetings from my Governor, Governor Bill Richardson, and special greetings to Congresswoman Millender-McDonald from him.

My name is Rebecca Vigil-Giron, and I am the secretary of state for New Mexico and the president of the National Association of Secretaries of State. During the long run-up to election day 2004, we heard some critics say that it would be an election administration nightmare. Now looking back, the general consensus seems to be that the elections ran smoothly overall.

My peers and I knew that we were staking our reputations on the success of that day, and we worked hard to comply with the mandates of the Help America Vote Act. In fact, we successfully administered free and fair elections for the most part, even though HAVA has not been fully funded and the Federal Commission it created was 9 months late taking office.

Every State met HAVA's 2004 deadlines. Several States even completed reforms that could have been postponed until 2006. At least nine States were ready with statewide voter registration databases, and Americans with disabilities voted independently for the first time in many States.

My colleague, Secretary Ron Thornburgh of Kansas, will speak more about the national picture, but I can tell you that in New Mexico, Federal funding for election reform helped us improve our electoral process. New Mexico prepared for the election with an unprecedented nonpartisan voter education program that was one of the most successful in the country. We produced television and radio spots in English, Spanish and Navajo that were aired statewide. As a direct result of that campaign, more than 1 million of my State's 1.9 million residents are registered to vote. We registered 152,000 new voters between January and October of 2004, an increase of more than 15 percent in the total number of reg-

istered voters. Voter turnout was 26 percent higher than in the 2000 Presidential election. More than 160,000 new voters cast ballots in November 2004, thanks largely to my voter education campaign.

For the first time ever, New Mexico offered provisional ballots. More than 18,000 New Mexicans voted provisionally. And even though not all of these provisional votes were certified, not a single person was disenfranchised. I do believe, though, that uniform statewide standards for the certification of provisional votes will need further refinement in New Mexico and in all States.

New Mexico is the only State in the Union with a State constitution that requires us to provide all election materials in both English and Spanish statewide to all voters. This year we also provided written and oral election information in the languages of the Navajo Nation, the Mescalero and Apache Nations and 19 Pueblo Nations. New Mexico leads the country in this area now, but 37 States are now required to determine how to effectively reach language minority populations.

We are also just months away from completing the installation of our new statewide voter registration system. New Mexico will be one of the first States in the country to have a central system in place that is in full compliance with HAVA. We expect that our system will be a turning point in election management. The system will significantly reduce duplicate registrations. It will help ensure that only legitimate voters are on our voter rolls by using our new statewide deceased and felon files. The system will provide a backup data center for disaster recovery, something that New Mexico counties could not have afforded on their own. My office will always have an accurate, up-to-date voter file and will no longer have to depend on monthly updates subject to human error.

Advanced technologies like bar codes and document scanning will make public employees more efficient and save taxpayer dollars. The system is a significant advancement in election technology, and it was funded with HAVA dollars. It is a tribute to the foresight and vision of this committee.

New Mexico's progress points to the fact that HAVA is working. I urge the members of this committee to continue to support HAVA in its original form and to fully fund the law. I have full confidence that with your support, we will finish the job of protecting our democracy for future generations, and I want to thank you, and may God bless you in the new year.

[The statement of Ms. Vigil-Giron follows:]

NM Secretary of State Rebecca Vigil-Giron

Address to the Committee on House Administration
United States House of Representatives

Date: Wednesday, February 9, 2005
Time: 10:00 AM
Place: 1310 Longworth Building
Contact: Jeff Janas 202-225-8281

Notes: Arrive 15 minutes prior to hearing.

Check in at main office 1309 Longworth Building

Good Morning:

Chairman Ney; Representative Millender-McDonald; distinguished members of the committee; thank you for your invitation to address the committee today.

My name is Rebecca Vigil-Giron.

I currently serve as Secretary of State for New Mexico and as President of the National Association of Secretaries of State.

Almost four years ago, I testified before this committee as a member of the National Elections Standards Task Force to set forth our recommendations for the Help America Vote Act. Today I am here to report on the effect of HAVA's implementation in New Mexico.

Federal funding for voter equipment, statewide data bases, poll worker training and voter education were made possible by HAVA and it has made our electoral process better.

Last November, the mandates of the Help America Vote Act were tested nationwide for the first time by a presidential election.

In New Mexico the presidential election was fiercely contested and it ended up being one of the

closest in the nation. New Mexico lived up to it's reputation as a battleground state.
We prepared for the election with an unprecedented non-partisan voter education program that was one of the most successful in the country.

We excelled in our mandate to fully educate voters on voting procedures, voting rights and voting technology.

Television and radio spots informed the public in English, Spanish and Navajo languages on issues ranging from voter registration, to early voting, absentee and provisional voting.

With a total population of only 1.9 million, New Mexico now, for the first time, has over 1 million registered voters.

From January 1st through October we had over 152,000 newly registered voters which represents an increase of over 15 percent in the total number of registered voters.

The success of our television and radio voter education programs were largely responsible for increasing voter turnout by 26 percent over the presidential election of 2000.
Over 160,000 new voters went to the polls in November 2004.

For the first time ever, over 50 percent of New Mexico citizens cast their ballots through absentee and early voting.

Over 18,000 New Mexicans cast provisional ballots for the first time,

and even though not all of these were ballots counted in the end, not a single person was disenfranchised in New Mexico.

Uniform standards for the acceptance or rejection of provisional ballots will need further refinement in New Mexico and in all states.

I am very proud of how New Mexico compares to other states in the management of it's election systems.

We have a solid foundation to build on, not just in New Mexico, but in our country as a whole.

New Mexico is the only state in the union with a state constitution mandating electoral information be provided in both English and Spanish.

We have also met the challenge of Native American languages representing the Navajo Nation, the Mescalero and Apache Nations, and 19 Pueblo Nations.

New Mexico leads the nation in this area. The Help America Vote Act will be a tremendous asset towards reaching language equity for voters in all states with large minority populations.

We are just months away from completing the installation of our new statewide voter registration system.

New Mexico will be one of only a handful of states with a central system in place, and in full compliance with HAVA by the end of the year.

We are greatly benefitting from this new system that accelerates information management and results in a more accurate voter roll. For example:

1) We have fewer duplicate registrations.

When a new registrant is entered, the system gives a message if they are already registered in another county and allows the new county to immediately transfer that voter from the old county.

2) We can better ensure that only legitimate voters are on our rolls by using our new statewide deceased and felon files.

2) We are able to provide a backup data center for disaster recovery; something New Mexico counties could not afford on their own.

2) My office always has an accurate, up to date voter file. We no longer have to depend on monthly updates that were subject to human error.

2) Advanced technologies such as bar codes and document scanning make public employees more efficient, saving taxpayer dollars.

This system is a significant advancement in election technology which was made possible through the funding from HAVA.

It is a tribute to the foresight and vision of this committee.

Following yet another close presidential election, we cannot relent in our duty to

build the confidence of the people in our election systems.

I urge you as members of this important committee to continue support for full funding of HAVA.

I have full confidence that with your support we will finish the job of protecting our democracy for future generations.
Whatever our party affiliation, it is our duty to firmly re-establish the electoral foundation of our democracy and to prepare it for the demands of the future.

We will be partners towards this goal, and we will succeed.

Thank you and may God bless you in the New Year.

The CHAIRMAN. Secretary Thornburgh.

STATEMENT OF RON THORNBURGH

Mr. THORNBURGH. Thank you, Mr. Chairman. It is a pleasure to be back before the committee. I appreciate the opportunity to spend some time with you this morning. Obviously, a lot of work has been done. My colleagues are going to spend time talking specifically about certain elements within the State. I hope to present a bigger national picture and paint that picture a little more for you.

The November 2, 2004, election operated, in my opinion, just the way Congress intended in that it was—there were certainly scattered stories of election glitches, of equipment glitches. There were a few stories of poll worker errors. But there were no widespread claims of disenfranchisement as we saw in the previous Presidential election.

Our system certainly is not perfect. There were too many long lines and too many provisional ballots cast, not as a reflection that provisional ballots are a bad thing, but we can do a better job in keeping the records clean so there is not a need for provisional ballots. However overall, last November's election was successful, and elections are better today than they were just a few years ago because of the great work of this committee.

You designed HAVA several years ago with very clear goals: historic reform, consistency nationwide, appropriate funding, broad guidelines, and you left the specifics to the States. You created a good system that balanced Federal and State interest. And after HAVA only being 3 years old, the reforms are working.

I would ask that Congress continue to stand by the system it created. The investment and the outcomes can only be realized with continued full funding with the Help America Vote Act. We, the States, have made significant progress. In this last year, every nonexempt State provided provisional voting for the first time in America. Nine States, and in some counts it is as much as 15 States, central voter registration was available prior to the extended deadline of the Federal guidelines. Thanks to HAVA funds, changes were made in a number of States, the way in which we educated voters, the way we reach out to voters, provide information about polling place availability. And in Kansas I am proud to say for the first time in our history as a State, every single polling place was ADA-accessible. It is an extraordinary challenge and effort by HAVA in order to be able to do that.

Despite significant progress in what we believe to be a very short time, we are concerned by what we see as a movement to federalize elections. Let me just state very clearly, I believe, and this is my personal opinion, the biggest fear among the States is a continued expansion of the Federal role through regulatory oversight and micromanagement.

I would assume we will have a chance to discuss the NASS resolution at some point, so I won't go into great details right now.

President Reagan said in his 1983 State of the Union address that one of his goals was to restore State and local government to their roles as dynamic laboratories of change in a creative society. We certainly owe a great debt to our Federal partners, and we have all benefited from bold State experimentation: In the State of

Oregon, where we have mail voting and 85 percent voter turnout, where nearly every vote is cast through the mail; in six States with election day registration, we had 74 percent voter turnout. And if we standardize everything, we lose the ability to create those kinds of systems that allow others to learn from that process.

There has been great innovation and leadership. The ingenuity and change cost dollars. Congress has not yet provided full funding to provide for the long-term management and updates that will certainly be a part of where we go. Congress has clearly defined your desired outcomes. The States clearly must be allowed to do what we do best, and that is figure out what works best for our own cities. Congressman Ney, I think you have heard me say it before, what works for New York City doesn't work for Cawker City, Kansas, home of the world's largest ball of twine. We have to understand the distinctions. Congress must also clearly stand up to its obligation and fully fund the requirements of HAVA.

Thank you for the opportunity to be here, and look forward to answering your questions.

The CHAIRMAN. Thank you very much.

[The statement of Mr. Thornburgh follows:]

Testimony to the United States
Committee on House Administration
Submitted February 7, 2005

Let me begin by thanking the members of the Committee for inviting me to testify here today. My colleagues have reported on HAVA implementation in their respective states, I will discuss the broader scope of implementation nationwide.

In the days after November 2, 2004, the media reported that elections operated much as Congress intended when it passed the Help America Vote Act of 2002 (HAVA). There were only scattered stories of voting equipment glitches and poll worker mistakes, and no widespread claims of voter disenfranchisement. Certainly, our nation's election system is not perfect. This year, we saw too many long lines at polling places and large numbers of provisional ballots cast. But last November's election was successful overall.

When Congress passed HAVA, it provided federal funding for historic reform and consistent election administration, while supplying the states with enough direction to help them improve the system. Congress smartly left most of the specifics up to the states. HAVA was an investment by Congress, the states and counties in a desired outcome that can only be realized by fully funding the law and allowing states to decide how to best implement its mandates.

HAVA is less than three years old, and its final deadlines are mere months away. When you passed HAVA, you created a good system that balances the interests of both state and federal governments. The reforms are working, and I hope Congress will continue to stand by the system it created.

The states have already made significant election reform progress. In 2004, every non-exempt state was compliant with HAVA's provisional ballot mandate. At least nine states had statewide voter-registration databases in place by November, well ahead of HAVA's extended deadline of 2006. And thanks to the federal funds HAVA provided, state election officials were able to reach out to voters in unprecedented ways:

- Iowa's secretary of state sent voter guides to every household in the state.
- Minnesota and Michigan offered polling-place locators on their Web sites.
- Americans with disabilities voted independently for the first time in several states, thanks to modernized voting equipment. And in Kansas, for the first time ever, every polling place was fully accessible and ADA compliant in November of 2004.

The states are focused now on meeting the deadlines HAVA imposed and continuing to improve the elections process overall. But the chief state election officials are concerned that, despite states' significant progress, there is a movement by some in this Congress to federalize elections. Let me just say very clearly: the states' biggest fear is a continued expansion of the federal role in elections through regulatory oversight and micromanagement. In this case, regulated uniformity does not equal success.

In his 1983 State of the Union Address, Ronald Reagan said that one of the goals of his presidency would be "to restore to states and local governments their roles as dynamic laboratories of change in a creative society." Certainly, the nation's election reform progress owes much to our federal partners for providing broad objectives and funding, but we have also benefited greatly from the successful experiments and innovation of state governments.

Oregon is the only state to offer voting almost entirely by mail, and in 2004, voter participation there was at a rate of more than 85 percent. In the six states that offered Election Day voter registration this year, voter participation was close to 74 percent, compared to a rate of approximately 60 percent nationwide.

While some states found their own unique ways to increase voter participation, others have used different approaches to attract poll workers. Kentucky officials asked sheriffs and judges to enlist volunteers and even recruited at summer festivals. New York City paid its poll workers up to $300 for a day's work.

Kansas is developing a statewide voter registration database that will also be capable of handling every aspect of election administration. While the system is not unique, the planning process was. Just as I am asking you to allow the states some autonomy, I allowed the counties in my state to determine what would work for them and to design the system accordingly. I selected ten well-respected county election officials to help plan the system and to communicate its advantages to their peers. In the end, I let the counties decide whether or not to use it, and I'm happy to report that every county election official in the state elected to use our system.

Clearly there is great innovation, experimentation and leadership being provided at the state level. But ingenuity and change cost money. Congress hasn't provided enough funding to pay for the continual upgrades and long-term management that the mandated new hi-tech systems will require.

Abraham Lincoln once said, "Judging by all they say and do, and by the subject and nature of their controversy with us, let ***us*** determine, if we can, what will satisfy them." Congress clearly defined the desired outcome of election reform when it passed HAVA. The states clearly must be allowed to continue to determine how they can each best achieve that outcome, and Congress should clearly stand up to its obligation to fully fund HAVA.

Thank you again for the invitation to speak today. I look forward to answering your questions.

Respectfully submitted,

RON THORNBURGH
Kansas Secretary of State

The CHAIRMAN. Secretary of State Rokita.

STATEMENT OF TODD ROKITA

Mr. ROKITA. Thank you, Mr. Chairman and members of the committee. It is a pleasure to be invited to speak with you here today about the Help America Vote Act. In Indiana, we still say HAVA, not HAVA. So it is a little bit different for us.

To speak about the Federal legislation, to me a constitutional point, that really was legislation to help not a national election, but the elections in 50 sovereign States. And some of those elections dealt with elections for Federal office where those offices are held in a stateless city. I want to thank you, Chairman Ney. If I understood you right from your comments, you still support full funding of HAVA, and you will get that for us, and that is very much appreciated on behalf of the people of Indiana and the rest of the secretaries that are here.

When I first was elected secretary of state January 1, 2003, I sent a letter out to all our 92 county clerks, and if you ever want to have a discussion in federalism, I invite you to have a hearing in Indiana, and I will bring my 92 county clerks and talk about government closest to the people. It is something they certainly believe in. But we have been working on this since day one, and in order to be successful with the Help America Vote Act, you have had to start working from day one and lay the foundation and do the brick building to bring us where we are today in Indiana. And we are at the verge of success with implementing Congress's intent.

You have to bring everyone to the table. In Indiana, we went beyond bipartisanship. We went to tripartisanship. Where it was left for us to develop a plan, we brought 28 members to the table, all the political parties, the media, the military, the advocacy groups and our county clerks. And my office, my job has changed dramatically from my predecessor's. I can tell you that I spend at least 70 percent of my job as secretary of state on this, and that has never been done before. And I know that some people believe the only other thing that the secretary of state has to do is watch the State seal, but there are a lot of things going on in our statehouse.

When Hoosiers went to the polls in 2000, over 50 percent of them voted on what has become the much maligned and antiquated equipment. As I have the honor to speak with you today, that number has gone down to 10 percent, and we are well on our way to zero percent. Everyone is on better equipment by January 2006.

We are on track with our statewide voter file, and that, again, you have got to understand the importance of foundation laying to get something like the statewide voter file done when you haven't had one in your State. In Indiana, we had 92 separate files.

We also have an overseas voting guide, which has been labeled a best practice by the Federal Voting Assistance Program, and our education and outreach continues to grow at levels that Indiana has never experienced before.

There was some talk about provisional balloting. In Indiana, we have a common-sense approach to provisional balloting, and that is you have to be in your precinct in order for your ballot to be counted, and there are some very good public policy reasons to do that. One of them is that if you allow what I call poll crashing, to go

anywhere you want to vote, you have some very large administrative headaches. It would be impossible to know how many provisional ballots to even print if that was going to be the case. You would also send the wrong message. You would say it is more important to vote for President of the United States than for mayor or city council. And I don't have to tell this committee that a lot of the decisions that affect our lives are made by those local races.

And then consider the public policy of a tie vote in a race. In 2003, in the Frankton-Lapel School Corporation race, there was a tie vote. If people weren't made to vote at the precinct, how would that person feel if they didn't have a chance to cast that tie vote? That tie was actually decided by a court, which brings into focus a larger issue.

At some point we have to take these elections back for ourselves. The Constitution, if you look through it in that very objective, clear lens that Thomas Jefferson prescribed for us, the people are to elect our leaders, not the courts. And I would urge this committee as it goes through its deliberations to keep that in mind.

One last point as I finish up with my remarks. We have not had a perfect election in this country since 1776. I would venture to say we haven't had a perfect election in the history of this world. In Indiana, 30,000 people were in some way or another responsible for our elections. And I don't pretend to know the Bible better than Reverend Soaries, but I know it talks about the imperfection of the human, and I do say that what elections have to be, as we all feel, I believe, free and accurate, with everyone having equal opportunity and access if they are eligible voters to the polls. And that is what HAVA does, and that is what we are working for best of all at the State level. Thank you.

[The statement of Mr. Rokita follows:]

Testimony of Indiana Secretary of State Todd Rokita
for the Committee on House Administration
February 9, 2005

Chairman Ney and members of the Committee on House Administration, I would like to thank you for inviting me to testify regarding Indiana's implementation of the Help America Vote Act of 2002 (HAVA), how it affected the 2004 General Election, and our plans for full implementation of HAVA. For those of us charged with constitutional and statutory duties to impartially promote and conduct elections, implementing HAVA is not a small task. HAVA has brought effective and much-needed election reform to our state, as it has for the rest of the country. We all face significant challenges presented by HAVA, and in Indiana I believe we are addressing those as effectively and efficiently as we can. Certainly full federal funding of HAVA is needed to help state and local election officials succeed in making HAVA work. I would appreciate your efforts in helping make full funding a reality.

HAVA implementation is progressing very well in Indiana. In 2003 our state plan was developed by a diverse group of 28 members I appointed from a variety of backgrounds – all three major political parties in the state, county and state election officials, the military, the media, the disability community, minority communities, and state legislators. Today only about 10% of our voters would vote on outdated voting equipment, and we expect to have that down to zero. That is, every registered voter will have the opportunity to vote on new equipment. Our statewide voter registration system is under development in a very inclusive process involving county election officials, state agencies, and other stakeholders. We carried out a robust outreach and education initiative for voters and poll workers in 2004. Before spending taxpayer money on polling places, we surveyed every polling place in the state to determine their condition for accessibility, and we are now working with and encouraging county officials in our 92 counties to address accessibility issues in polling places. I intend today to highlight some successes we have seen in Indiana as well as some challenges we have faced in the election reform arena due to HAVA.

Provisional Voting

In Indiana, we embraced the idea of provisional voting shortly after the 2000 election, when it was proposed by our Bipartisan Election Task Force on Election Integrity. So we were pleased when HAVA made provisional voting the law of the land.

I see provisional voting as a tremendous accessibility tool, knowing it can and should be used only as a *last resort* when a qualified voter would have otherwise been turned away from the polling place, her civic duty unfulfilled. Due to the strict and, frankly, sometimes unreasonable and ill-considered mandates of the National Voter Registration Act passed by Congress in 1993, keeping an accurate list of voters has become an even more daunting task, and clerical mistakes with the list can occur through no fault of the voter. In these cases, that voter's intentions should be honored and his ballot counted. Provisional voting offers us this chance, as election administrators, to get

it right, maintain voter confidence, and encourage voter turnout -- one of our most important goals.

At the same time, provisional voting can encourage system accountability. It can deter unscrupulous individuals, political parties, activist groups or campaigns from seeking to dilute the voice of honest voters by rushing polling places with unqualified voters and people intending to vote multiple times. In 2002, the *Wall Street Journal* focused attention on this illegal practice in Indiana by imbedding one of its columnists in a Congressional campaign where that columnist detailed, through his eyewitness account, voter intimidation in reverse -- that is, poll worker intimidation – by groups of persons (being chauffeured from polling place to polling place in vehicles used by the campaign) demanding to vote and proceeding to cast ballots without regard to the law or the rights of other voters.

Each state's election system has its own strengths and its unique tools to provide for both voter access to the ballot and for election integrity. Therefore, HAVA correctly left the details for administration of provisional voting to the states. I would like to describe Indiana's process, which we believe fairly implements provisional voting in a way that protects voters' rights and fosters system accountability.

Indiana Code 3-11.7-5-2 sets forth the key requirement concerning precinct based provisional voting in Indiana. Each county election board ultimately decides whether a provisional ballot is valid, and therefore whether the provisional ballot should be counted. The county election board can be assisted by bipartisan teams in sorting provisional ballots and in helping make "easy" calls where the facts about a provisional ballot are not in dispute.

When the county election board examines a provisional ballot, which is still sealed inside its secrecy envelope to protect the privacy of the voter's choices, the board asks three questions:

(1) Is the affidavit signed by the provisional voter properly executed?
Did the voter sign a sworn statement that the voter meets the qualifications to be eligible to vote in the precinct?

(2) Is the provisional voter "a qualified voter of the precinct"?
Is the voter registered to vote in the precinct where the voter is casting the provisional ballot (or otherwise "qualified" to vote in that precinct under one of the fail-safe methods)? Does the person continue to meet the requirements for being a voter in the precinct (that is, for example, is the voter still alive)?

(3) If this voter claims to have applied to register to vote at a "full service" voter registration agency, did the voter apply at the agency while registration was still open?
Since "full service" voter registration agencies under the National Voter Registration Act will continue to accept voter registration applications year round, did this voter apply with the agency before registration was closed before the election? If a voter applies after the registration cutoff, that application is still processed, but is done so when registration reopens after the election.

The county election board has to find that the answer to each question (1), (2), and (3, if applicable) is yes. If the answer is yes to each question, the provisional ballot is declared valid, removed from the secrecy envelope, and processed.

Policy Considerations

One of the strongest arguments for having provisional ballots cast at the precinct where the voter lives comes from one of the most successful community efforts in modern times: the neighborhood watch programs. The neighbors who participate in these programs are the best equipped and have the best knowledge to sort out innocent behavior from suspicious activity. They know the difference between people simply walking along their street and an unfamiliar car circling the playground.

When many of these same community activists serve as poll workers, they may know that a person whose name does not appear on the poll list is their neighbor, or will know if a residence address given by a person is actually a demolished building. They can better communicate the questions they have to the county election officials to help eliminate the need for the voter to cast a provisional ballot in the first place. In Indiana, we firmly believe that the provisional voting process is one of last resort—to be used only when all other methods of proceeding directly to the voting booth have been exhausted. So far, we have seen its use limited to the rare exception and not used as "normal" way of voting. Based on reports of large numbers of provisional votes cast in various states, it seems to me that provisional voting is either not being used as a last resort or is being abused. I believe the way we address this in Indiana, by making sure all other avenues are exhausted before the casting of a provisional ballot, best serves the voters.

Everyone acknowledges the desperate need to recruit poll workers. We also know that both poll workers and voters are discouraged by long lines and delays at the polls. Discouraged poll workers may decline to work again. Discouraged voters may decide that the lines are too long and may walk away without voting. We need to recognize that while of course voting is important and the integrity of the election process is critical, it is also true that for many non-activist voters outside this room, casting a ballot is only one of several important or critical things that they must get done on Election Day. For example, a parent picking up a child after school, a worker hurrying to her job, or a minister on the way to visit a patient at a hospital also have other important things to do the rest of the day.

For that reason, we want to make every voter's experience within the polls as pleasant and as efficient as possible. Some problems at the polls are of course unavoidable. Some voters have more ability (and perhaps more patience) than others to wait while the poll workers try to solve these problems.

But every voter who would appear at a polling place other than at the precinct where he lives to cast a provisional ballot there would be requiring another voter to wait. The voters in line would have to wait while the poll workers look unsuccessfully for the name on the poll list, while the poll workers process the forms the voter fills out to cast a provisional ballot, while the provisional voter uses a booth to cast her ballot, and while the poll workers provide the provisional voter with the information required by HAVA about the provisional ballot process.

Then, there are the logistical problems associated with the 'vote anywhere' approach. For example, administrators could not possibly know how many provisional ballots to print, and of what kind, for a particular polling place, which would lead to ballot shortages, and yet again, turning potential voters away—the very thing provisional voting was designed to stop!

Yes, every vote is important. But no voter is more important than any other voter. We should encourage both equal treatment and equal responsibility for all voters.

Prohibiting precinct-based provisional voting also sends the wrong message about the importance of voting for all of the other offices on the ballot. While important decisions are made in Washington and in state capitals, some of the decisions that have the most obvious and compelling effects on people's daily lives are made down the street at city hall or in the county government building. The decisions about whether to rezone to allow for a new business, to change a speed limit in a neighborhood, or to raise school tax levies are often made by these local elected officials.

It is also true that elections to these local offices are sometimes decided by one or two votes, or even have ties. While some might think an actual tie vote is statistically too rare to consider, in one Indiana county in 2003 a nonpartisan election for school board resulted in a tie vote between a challenger and the incumbent.

How ironic it would have been if a voter in that county had chosen to stop by some other polling place on the way home from work to vote for the "more important" statewide offices, such as United States Senator or Governor, by way of a provisional ballot since it was more convenient to do so, only to discover the day after the election that she could have decided the school board election by her own vote if only she had appeared at the precinct where she lived. Our republic needs and deserves a system where elected offices are treated in a uniform fashion when it comes to the selection of the officeholder.

(NOTE: In Frankton-Lapel school corporation in Madison County, Indiana, the local judge broke the tie in favor of the incumbent).

As we have been shown in other instances, history is a stubborn teacher. If we fail to remember our lessons, she will teach them to us again and again.

We have been taught the lesson in the past that to protect the integrity of the election process, it is important as a general principal to have voters cast their votes in the precincts where they live. Let me take a moment to tell you about the lesson we were taught in Indiana.

There was once a close presidential election. The Democratic Party's candidate won the popular vote that year but lost the Electoral College vote to the Republican Party nominee. There were allegations both before and after Election Day of fraud in a key state that both parties had fought hard to carry.

The year was not 2000; the year was 1888. The state was not Florida; the state was Indiana. The candidates were not Bush and Gore; they were Cleveland and Harrison.

In Indiana, there was evidence that so-called "floaters" were being hired to go from one precinct to another on Election Day to cast votes for the most important race on the ballot: President of the United States. In the absence of an effective voter registration system, these floaters may have provided the margin of victory in a presidential campaign. No one knows for sure.

And that is one risk inherent in a system other than one with precinct-based provisional balloting. Yes, if modern-day floaters appeared at several polling places on Election Day, the law requires that these voters be given provisional ballots, whose validity can be determined later.

We also know from our experience in 2000 that the public's patience in waiting for election results can quickly wear thin and that the credibility of both the media and the entire election administration process can be damaged by prolonged doubt about which candidate has won an election.

A flotilla of modern-day "floaters" could have that effect in a key state in a national race or in a statewide race for United States Senator or Governor. Even if an effort to improperly sway the election results through misuse of provisional voting fails, there will be time required to sort out genuine from false provisional ballots. Once again, the general public will wait while the ballot battles are fought before county election boards or in the courts.

Just like problems at the polling place, some election contests, disputes, and recounts are inevitable. There will always be ill-motivated persons who attempt to win an election by any means, fair or foul. However, let's not have to learn the lesson about "floaters" again.

The aftermath of the 1888 election in Indiana was much like that of 2000. There was a bipartisan effort, led by the Governor, a Democrat, and the Governor-elect, a Republican, to enact laws that according to one historian "made Indiana a pioneer in election reform." Other states followed Indiana's lead in providing for secret, government-printed ballots for all voters, and for those ballots to be given to each voter at the voter's respective polling place.

The same historian (Walsh, Centennial History of the General Assembly, p. 228-229) wrote, "the immediate result" of these reforms "was restoration of public confidence in the integrity of Indiana's election process."

I contend that implementing reforms in the spirit of HAVA can and is beginning to have the same effect in restoring public confidence in the election process. And provisional voting supports our goal as election administrators – making sure every eligible vote counts.

Voter Registration

A decade's worth of election experience since 1993 has given us a much better appreciation of the strengths and weaknesses of the National Voter Registration Act (NVRA). While NVRA fulfilled its intended goal of making it easier for eligible voters to register, its lack of flexibility has left us with a legacy of unintended consequences. Voters and potential voters are discouraged when they hear media reports that the percent of voters turning out to exercise their civic duty is declining. What they do not realize but we election officials know is that voter turnout is probably much higher than is reported because voter turnout statistics are based on the number of people listed in the voter rolls even though many are neither eligible to nor intend to vote in the places where they registered long ago. In Indiana, we estimate about 20% to 30% of our voter roll statewide consists of people who are no longer eligible to vote in the places where they

appear on the poll lists, either because they have moved and registered elsewhere or because they have died and election officials have not been able to remove them from the list.

Poll workers are discouraged and frustrated when they see the names of deceased or non-resident voters appear on the poll list year after year, despite their efforts (or those of the voters) to have the list corrected. Because poll workers often work at the same polling place year after year, they see these problems continuing with no real answer to the questions about when or how it can be fixed.

Election administrators are resigned to their task of performing the unhappy duty of explaining the good intentions of NVRA to a spouse who is grieved that the name of his deceased wife is still on the poll list, right above his own. Does this stop that widower from returning to the poll year after year? Maybe not, but this additional grief point is another unintended consequence of the NVRA.

These problems, resulting from the overly rigid federal statutes governing voter lists, call forth our instinct to help and our sympathy. But the criminal acts of those who take advantage of these phantoms who appear on the poll lists should make us outraged at this abuse of our election process. I point to the 2003 mayoral primary election in East Chicago in Lake County, Indiana as an example of what can and does happen. Because of rampant voter fraud, the Supreme Court of Indiana ordered a new special election for mayor of the city late last year. Media and eyewitness accounts revealed that several individuals voted from addresses where homes had been demolished years before for the construction of a new baseball stadium.

I served on a bi-partisan Election Integrity Subcommittee created by the Lake County Election Board in 2003 to address the many problems with elections in Lake County where we heard such testimony. We received documents, such as obituary notices, and sworn testimony of individuals indicating those voters listed in the obituary notices had indeed actually died, but poll lists indicated they had voted, or more correctly, someone had voted in their names in election after election after death. While these cases of fraud and election abuses in Lake County seem extreme and are by some regarded as the death throes of an old political machine, voter registration abuse can and likely does happen in other places around the country. It is a very real problem and one we can easily prevent by removing some of the rigid restrictions of NVRA.

From an administrative perspective, bloated voter rolls are costly for federal, state, and local governments. Election administrators must prepare precincts for elections based on the number of registered voters, knowing some of them could not possibly show up to vote. This leads to wasteful spending on ballots and other election day forms. For instance, Indiana law requires (for its optical scan and punch card counties) local election officials to have at each precinct enough ballots for every registered voter, regardless of what turnout statistics show. At the end of each election day, mountains of relatively expensive, specially printed paper must be discarded. Bloated rolls also lead to increased costs for candidates, parties, and interest groups that rely on state and local voter lists for their mailings.

Further, if we had a true accounting of the real number of eligible voters in each county, many counties could and would likely condense precincts. In addition to easing the very real problem of recruiting poll workers, having a true and accurate voter registration list would lower the costs associated with putting on elections, including

reducing the amount of taxpayer dollars spent on stipends for poll workers. Furthermore, local election officials could then reallocate voting equipment, placing additional machines in high traffic precincts and having back-up machines ready to go in case of election day problems. Counties could get a more accurate estimate of how many machines they really need and save scarce state and federal money.

HAVA's requirement for a single, uniform, official, centralized, interactive computerized statewide voter registration list is a step in the right direction. In Indiana, our statewide voter registration system project is well under way. After a very thorough procurement process, we selected a vendor last year to develop our system and have it in place by the end of 2005. In just a few weeks, we will be rolling out a pilot program in about 10% of our counties. The response from county election officials has been overwhelming – more than half of Indiana's 92 counties volunteered to be one of the system's pilot counties. We have included in our discussions, and on our statewide voter registration system steering committee, representatives from the other state agencies with whom we will work to obtain voter registration information, including the department of correction, department of health, and bureau of motor vehicles.

While creating this single voter registration list has presented its own challenges, like addressing the varying types of technology available in the counties, once it is in place it will revolutionize election administration in our state. It is important for us to keep in mind, though, that the data coming out of the system is only as good as the data going in. The fact is our voter lists, largely because of NVRA, are bloated. We plan do what we can to clean up our statewide list during this process, but we do still have the constraints of NVRA to consider.

Voting Systems

In Indiana in 2000, over 50% of our state's voters were casting ballots on punch card or lever voting equipment. In the 2004 elections, only 10% of registered voters would have voted on those same machines. At the end of 2004, the one remaining lever county retired the last lever machines. Many counties have purchased machines accessible to disabled voters so they will have one in each polling place. I am confident all remaining punch card machines will be phased out and there will be a machine accessible for disabled voters in each polling place in Indiana by 2006. To date, and pursuant to our state plan, we have distributed $17 million in voting equipment reimbursements to Indiana counties.

We all heard the sometimes sensationalized press accounts regarding direct record electronic (DRE) machines in the months leading up to the 2004 November election, particularly from the groups who called for a voter receipt or voter verified paper trail for all DRE machines. In Indiana we have been using DRE machines for the last twenty years in some counties. Like any device, DREs can have problems. But we have had very few, and all of these problems can be attributed to inevitable human error and not malice or criminal efforts to suppress or steal votes. During the Indiana Ninth Congressional District recount we recently conducted following the November 2004 election, three of the six counties we recounted before the recount petition was dismissed were DRE counties. In a very transparent process, parties, election officials, and

watchers had the opportunity to examine poll lists, internal paper audit trails from the DRE machines, and the machines themselves. And we again found the machines worked to reliably and effectively count votes. There were no significant changes in the number of votes cast for either candidate in any of the counties.

A great deal of information has been presented on both sides of the debate about voter verified paper trails for DRE machines, and this discussion will continue for years. Some of my colleagues have contemplated, and at least one already enacted, a statewide requirement for voter verified paper trails for DRE machines. I respect the right of my colleagues in those states to make their own decisions on this important issue.

In Indiana, having successfully used DRE machines for 20 years, we have not taken the position of requiring a voter verified paper trail. I urge this committee and the entire Congress to continue to allow these decisions about features on voting equipment to be left to state and local election officials who are closest to and know best the needs of their voters and the unique needs of the election process in their states. The administrative nightmare of adding new requirements on top of partially implemented HAVA requirements now, with less than eleven months before the HAVA implementation deadline and with voting equipment procurement contracts pending or already entered by most jurisdictions, is enormous.

We have also addressed in Indiana the issue of voting system vendor accountability. In 2004, state election officials discovered that a vendor had installed and allowed uncertified software to be used during the 2003 municipal elections in otherwise certified equipment. Our state election commission addressed concerns with using this software by requiring a hefty bond to be secured by the vendor for the 2004 November election. We also addressed this issue with legislation. In 2004, Indiana made it illegal to not only sell or install uncertified voting equipment, including software, but also to market uncertified equipment in the state. We did this to protect our county election officials from the old "bait and switch" routine, that is, being shown one model and sold another. In 2005, we are asking our legislature to pass law allowing my office to impose hefty civil penalties (after an administrative hearing) against any voting system vendor who knowingly or negligently allows voting equipment not allowed by state law to be used in an election or allows voting systems to be programmed or used in any manner contrary to state law.

Accessibility Standards

In Indiana, we partnered with the Governor's Planning Council for People with Disabilities to conduct a statewide survey of all Indiana polling places on election days (about half during a May primary and half during a November general) in 2004 so we could give local officials detailed roadmaps as soon as possible for correcting accessibility problems in their polling places. We conducted these surveys on election days to be sure our results reflected actual conditions in locations when they are set up for an election.

Our surveys found that about 80% of polling places are mostly compliant with accessibility standards. We are now working to correct easy to fix problems by ordering parking signs and door handles in bulk through state purchasing avenues to send to

counties for their use in polling places. Further, we are beginning a project where we hope to work with service groups like the Boy Scouts, United Way, and other local groups dedicated to community service to make upgrades that require construction, like ramps and accessible parking lots. Our hope is that this will be a way to stretch the limited state and federal funds available to pay for such upgrades for all polling places as well as help foster a sense of community involvement and investment in our elections.

To give local election officials more flexibility in relocating polling places that cannot be made accessible, we have legislation pending before our legislature to enable local officials to move a polling place up to five miles outside a precinct's boundaries if such a move is necessary to make the polling place for the precinct fully accessible to voters with disabilities.

As part of our training and education efforts in 2004, we worked with Indiana Protection and Advocacy Services and the Governor's Planning Council for People with Disabilities to properly train poll workers how to work with disabled voters and to educate voters with disabilities about their rights at the polls.

All of us have our own physical limitations today, and we may expect to face other physical challenges in the course of our lives. Therefore, making voting accessible is important for all of us. We intend to have accessible voting for all eligible voters in every precinct in Indiana by 2006.

Vote Fraud

The most important issue facing election officials around the country, and something we all consider every day, is voter confidence. Increasing the number of eligible, properly registered voters who turn out to cast their ballots is our mission. And voter confidence in our system is crucial to that mission. It is incumbent upon us to address potential problems as soon as possible and not wait until we have a crisis to fix the system. One important way to increase voter confidence is to curb vote fraud. As we all know, reports of fraud and abuse receive much more public attention than good stories about smoothly run elections. So we must do all we can to stop vote fraud from happening.

In many places around Indiana, the documented and alleged vote fraud we see centers around abuses of absentee ballots, in addition to the problems with bloated voter registration lists detailed previously in this testimony.

Earlier in this testimony I referred to the vote fraud so massive in Lake County, Indiana that the Supreme Court of Indiana ordered a special mayoral primary and general election more than a year after those elections had originally taken place. The trial court judge in the case wrote an opinion over 100 pages long detailing instances of absentee ballot fraud. But vote fraud does not just happen in Lake County, Indiana.

In Anderson, Indiana, a mid-size city in the north central part of the state, a young man was convicted last year of vote fraud. He completed absentee ballot applications in the names of registered voters. Knowing the statutory turn-around time in which the election office would mail absentee ballots, he then literally followed the mail carrier and plucked the ballots out of the mailboxes. He completed those ballots and returned them to the election office. And he did it again in another election. He was later caught and

successfully prosecuted. Fraudulently cast votes like these deny those of us who cast honest ballots to have our votes counted as they should. These fraudulent votes dilute the vote of every honest voter who goes to the polls.

I truly believe Hoosiers are good, honest people. But these examples prove we have some bad apples. And if we have them in Indiana, you have them in your states. We must remember that every vote is important – every vote legally cast by an eligible voter. It is our duty to make sure those legally casts votes are not cancelled out by fraudulently cast ballots.

One reform our legislature is considering this year, and a reform I strongly support, is a requirement that each voter be asked to show photo identification when he appears to vote. A Rasmussen poll conducted last year showed over 80% of Americans believe we should be required to show photo identification to vote. It has been my experience that people expect to be asked for identification when they arrive at the polls. They approach the poll clerks' desk and immediately reach for a purse or wallet to get out a driver's license or other piece of identification. In today's society, we show identification for so many of our daily activities – to enter many buildings, to ride on an airplane, to write a check, to rent a movie. Voters expect to be asked for identification when they cast their ballots.

This is not about voter intimidation. It is about voter confidence. It is about the right of a legally registered voter to have her ballot counted and to expect that ballot to have exactly the same weight as every other legally registered voter's ballot. Inherent in this is the right not to have her vote diluted or cancelled out by someone who would act to defraud the system. Requiring government issued photo identification at the polls is a way to ensure this. State and local officials know this, and I look forward to working with my state's legislature to pass this important tool in providing a higher level of confidence for Hoosier voters.

I appreciate your invitation to allow me here today to share Indiana's experiences implementing HAVA. I look forward to continuing to work with you and with state and local election officials in my state and around the country as we approach HAVA's implementation deadlines.

Thank you.

The CHAIRMAN. Secretary of State Culver.

STATEMENT OF CHET CULVER

Mr. CULVER. Thank you, Chairman Ney, Ranking Member Millender-McDonald, Congressman Brady and Congresswoman Miller, and distinguished members of the committee, for your invitation to be here. My name is Chet Culver, and I am Iowa's secretary of state now serving in my second term.

In February of 2001, I served on a special election reform task force created by the national secretaries of state, or NASS. Our goal was to provide Congress with information and make recommendations in an effort to solve many of the election administration problems revealed in the 2000 Presidential election. Much of this input was reflected in the legislation that ultimately became the Help America Vote Act, or HAVA.

Having had the opportunity to work on HAVA since its inception, I want to express my appreciation to the bill's cosponsors, Chairman Ney and Congressman Hoyer, Members of Congress who supported the bill, and the congressional staff who have provided valuable assistance. This is an excellent piece of Federal legislation. I believe, properly implemented, HAVA will dramatically improve election administration in the United States and help tens of millions of Americans vote.

Because of HAVA and the financial resources it provides, Iowa is positioned to lead the Nation in these critical reform measures. We are making real progress. Our goal is not only to comply with this Federal law, but to create a model for HAVA implementation.

Today I was asked to report on three aspects of Iowa's HAVA implementation: First, our experience with HAVA. Simply put, our experience has been an extremely positive one. It has brought together Iowans in a bipartisan way, and we have made positive changes to the process that lies at the core of our democratic values: voting. Since we began implementation, we made it a priority to reach out in an inclusive fashion. Underpinning our State plan is more than 2 years' worth of input gained from 19 public meetings. For this effort, we reached out and involved voters, poll workers, elected officials, disability advocates, new citizens, diverse ethnic groups and many Iowans who have difficulty voting because of sight impairments or low reading skills. In addition, we recruited volunteers to participate on a dozen HAVA committees, subcommittees and user groups.

Twenty-eight HAVA committee sessions were held in 2003, and 25 sessions in 2004. Our objective in reaching out in such an extensive way was to guarantee that implementation would be embraced by all Iowans with the goal of helping them vote. As a result, Iowans will now experience HAVA's impact through better voting machines, a more efficient statewide voter registration system, improved election official and poll worker training, and unprecedented voter education efforts.

The second part of my testimony relates to the impact HAVA had on our 2004 election. I am pleased to report that HAVA had an extremely beneficial impact on the recent election. HAVA helped more Iowans participate in our democratic process than ever before. For the first time in the history of our State, Federal funds

were allocated to improve election administration and help Iowans vote.

In 2004, we spent nearly 1.1 million of our $30 million in HAVA funds. We spent it in the following ways that led to 95 percent voter registration and 75 percent voter turnout. We leased new voting machines to replace antiquated lever machines and hand-counted paper ballots. We made 37 more polling sites accessible for persons with disabilities. We conducted unprecedented statewide training for 127 county election officials. We provided a single uniform curriculum for training 10,000 poll workers. We made 1.3 million voter guides available to Iowa households. In each precinct we provided information highlighting voting rights and responsibilities. We produced Braille instruction booklets for every precinct. We translated HAVA-specific voting rights information into multiple languages. We developed a toll-free assistance hotline and a Web-based on-line election center, and we mailed voting information to 10,000 Iowa National Guard and Reserve family members.

All of these HAVA initiatives contributed to the highest level of voter participation in the history of our State. A record 2.1 million Iowans are registered, and a record 1.5 million Iowans voted. Iowa's turnout ranked sixth in the Nation in 2004, up from the tenth spot 10 years ago.

Finally, Mr. Chairman, let me describe our plans to ensure Iowa's complete and timely HAVA implementation. First of all, we are very proud of our HAVA State plan and the extensive grassroots input that contributed to it. An EAC Commissioner who reviewed our plan rated it as one of the very best State plans submitted. Our plan is the road map to successful HAVA compliance.

Voters, elected officials and technical experts will continue to be involved as we move forward. In addition, our office plans to visit each of Iowa's 99 counties over the next year to ensure statewide implementation.

Just as the planning process has been open and inclusive, we will continue to be diligent in our efforts to provide ongoing information to the general public and policymakers. Our Iowa plan, the Iowa HAVA plan, meeting summaries, budgets and timelines are posted on our office Web site.

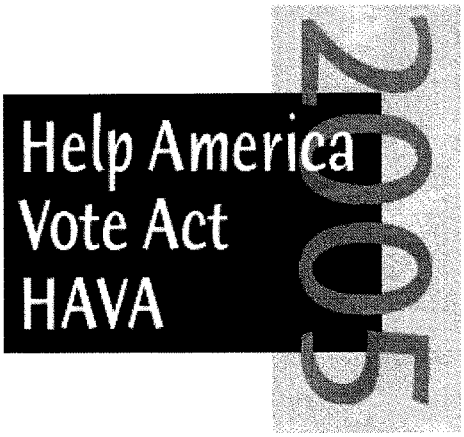
Let me briefly outline the budget as it is divided into three HAVA core areas. Technology: We will use 17 million to purchase HAVA-compliant voting systems, and we have budgeted 6.5 million for the development and implementation of new statewide voter registration systems. For voting machines, we are developing an efficient and cost-effective purchasing process. We developed an equipment funding formula that emphasizes equality and provides counties with up to 90 percent of the cost for their voting equipment. Machine replacement will be completed to coincide with two statewide elections in 2005.

In summary, I feel we have a plan in place and the commitment to excellence to ensure that all components of HAVA, technology training and education will be successfully implemented. We will get the job done by 2006. The changes we are making in Iowa's election are far-reaching, and they have already helped tens of thousands Iowans vote just as the Help America Vote Act intended. We recognize we couldn't be making improvement reforms if it

weren't for HAVA, so I am here to thank you, Mr. Chairman, and Ranking Member Millender-McDonald and the members of this committee for your invitation to be here and your leadership on this critically important civil rights and voting rights issue, especially as we celebrate the 40th anniversary in 2005 of the historic Voting Rights Act of 1965.

Thank you on behalf of the citizens of Iowa for providing us with this tremendous opportunity to make good election administration the very best in the country. It is an honor and privilege to testify today, and I would be happy to respond to your questions.

[The statement of Mr. Culver follows:]



The Status of the Help America Vote Act (HAVA) in Iowa

Testimony of Iowa Secretary of State Chet Culver
before the Committee on House Administration
United States House of Representatives

Wednesday, February 9, 2005

Good morning.
Thank you Chairman Ney; Representative Millender-McDonald; and distinguished Committee Members, for your invitation to be here today.

My name is Chet Culver. I am Iowa's Secretary of State and State Commissioner for Elections, now serving in my second term.

I am currently serving for my third term on the executive committee of the National Association of Secretaries of State (NASS).

In February of 2001, I was one of about a dozen Secretaries of State and State Commissioners of Election from across the country who volunteered to serve on a special election reform task force created by NASS. Our goal was to provide Congress with information and make recommendations in an effort to solve many of the election administration problems revealed nationally in the 2000 presidential election. Much of this input was reflected in the legislation that ultimately became the Help America Vote Act, or HAVA.

Early in the process, I had the honor to appear before your committee, Mr. Chairman; and I was asked to testify before a Senate subcommittee chaired by Senator Brownback of Kansas. One of the issues I raised in those hearings and with other policymakers was the inadequacy of lever voting machines. Nationally, discussions following the 2000 election focused on problems with punch card voting machines, which Iowa outlawed nearly 30 years ago.

However, at the same time, an Iowa county election official explained that for several election cycles, rubber bands and paperclips were used to hold together antiquated lever machines used in her county. Equipment companies stopped making replacement parts for the lever machines in 1982 – 90 years after the machines were first invented. Fortunately, by raising that issue, HAVA implicitly states that funds will be provide for states to replace punch card and lever voting machines.

Having had the opportunity to work with HAVA since its inception, I want to express my appreciation to the bill's co-sponsors, and to the Congressional staff who have provided valuable assistance. HAVA is an example of how working together in a bipartisan fashion, Congress and state elected officials can work together to solve problems. I want to acknowledge and thank Iowa's Governor and legislature for embracing this effort and providing the state match of approximately $1.2 million. The fact is that HAVA has already had an important impact on our democratic voting process, and will continue to dramatically improve it going forward.

Because of HAVA, and the important resources it provides, Iowa is leading the nation in implementing critical election reforms. We are making real progress. Our goal is not only to comply fully, but also to create a national model for HAVA implementation.

Even before HAVA was signed into law in October of 2002, Iowa began addressing election reform by completing a statewide, comprehensive assessment that formed a foundation for the planning and implementation stages that followed. The results of our initial assessment were compiled and published in a public document titled, "Election 2000: Facts, Findings and our Future." Then, as we proceeded through an extensive planning process, we published and filed our state HAVA implementation plan. We have published several semi-annual updates to the plan to provide a complete account of what has been accomplished and how public dollars have been spent. All of these reports are available to the public on my office's Web site.

Today, I was asked to report to your Committee on three aspects of Iowa's HAVA implementation:

- our experience with HAVA implementation;
- HAVA's impact on the recent election;
- and our plans for 2005-2006 that will result in Iowa's full implementation of the HAVA election reforms.

Iowa's Experience with HAVA Implementation

First, our experience with HAVA implementation in Iowa.
Simply put, our experience has been an extremely positive one. It has brought Iowans together to bring about positive changes to the process that lies at the core of our democratic values – voting.

Through HAVA, Iowa is making good election administration the very best it can be.

Since we first began HAVA implementation in Iowa, we have made it a priority to reach out in an extensive and inclusive fashion. Underpinning our state plan is more than two years worth of assessment and input gained from 19 public meetings held in communities throughout the state. This effort has involved thousands of concerned citizens, including: poll workers, election officials, state and local elected officials of both political parties, Iowans from rural, urban and suburban areas. We reached out to include advocates within the disabilities community, new citizens, Iowans of diverse ethnic backgrounds, and adult learners who represent nearly 500,000 Iowans who have difficulty voting because of low reading skills.

We found it valuable to identify technical specialists related to HAVA's core areas – voting equipment and database technology; election official and poll worker training; and voter education and outreach. Our objective in reaching out to include technical specialists was to obtain the appropriate mix of expertise and diverse perspectives that, in turn, would help guarantee the process would be embraced throughout Iowa's 99 counties and nearly 2000 precincts.

In addition to seeking a wide representation of Iowans to serve on our Statewide HAVA Advisory Committee, we recruited committed individuals to participate on six major HAVA implementation committees and half-a-dozen user groups and subcommittees. The major HAVA committees are: our Statewide Advisory Committee, Financial Oversight Committee, Voter Education Committee, Election Official and Poll Worker Committee, Voter Equipment Work Group, and Voter Registration Work Group. Twenty-eight (28) committee sessions were held in 2003, and twenty-five (25) were held in 2004. Elected officials from both political parties serve on these committees, and there is a bi-partisan balance in the leadership of the committees.

As a result of this extensive participation, Iowans will directly see and experience HAVA's impact through better voting machines, a more efficient voter registration system, improved election official and poll worker training, and unprecedented voter outreach and education.

To date, Iowa has completed an election assessment, developed a complete plan to implement HAVA, and we've begun implementation of the plan. In short, our Iowa experience with HAVA has been tremendous and positive.

HAVA's Impact on the 2004 Election in Iowa

The second segment of my report is to discuss the specific impact HAVA had on our 2004 election. Mr. Chairman, I am pleased to report that HAVA had a direct and positive impact on Iowa's 2004 election process.

For the first time in the history of our nation, federal funds were allocated to significantly improve election administration and help citizens vote. In Iowa in 2004, we spent nearly $ 1.1 million of our HAVA resources and we used it in the following ways:

- We leased new voting machines to replace antiquated lever machines.

Heading into the 2004 election, six of our 99 counties were still using lever machines, and one small county was using hand-counted paper ballots. As

Secretary of State, I decided to discontinue those practices and we used HAVA funds to replace those machines in all but one county in the fall of 2004.

To purchase new voting equipment for those counties, we developed a model bid process. It proved to be efficient, timely and cost-effective. The partnership involving the equipment vendor, local counties, and the Secretary of State's Office placed an emphasis on election official training for ballot preparation and equipment operation.

We added grassroots voter education to provide voters with demonstrations so they could gain a hands-on feel for their new machines. Demonstrations occurred at senior centers, grocery stores, and community events. We also mailed 50,000 informational cards to educate voters in those counties about the new voting machines they would be using.

- In 2004, we made polling places more accessible for persons with disabilities by widening doorways, installing railings, and paving parking spaces.

Ten percent of the polling locations across our state needed improvements to be ADA-accessible. To make those improvements, we received special development grants and made those funds available to counties through an easy-to-use grant program that funded polling place improvements. Counties were allowed up to $2,500 per polling site. Grants awarded in 2004 funded projects that made 37 polling sites 100-percent accessible in time for the fall elections.

In our approach to accessibility issues, we took our lead from Iowa Senator Tom Harkin, a true champion for Americans with disabilities and author of the Americans with Disabilities Act. We partnered with our Governor's Developmental Disabilities Council and Iowa Protection and Advocacy. Those partnerships helped us better understand and overcome the barriers facing many of our citizens.

- In 2004, we conducted unprecedented, statewide training for 99 counties' election officials and 10,000 poll workers.

HAVA funds supported the in-depth technical training and education provided to election officials through the State Election Administrators Training, or SEAT, program. SEAT is an Iowa-specific program developed in partnership with adult education experts at Iowa State University Extension, county election officials, and the Secretary of State's Office. It is a model program that we hope other states will adopt.

SEAT training is comprehensive -- 50 hours of quality training, with a continuing

education component. In 2004, 127 election officials completed the program. These election administrators earned certification, and that is a key point. Certification demonstrates to the public that we are serious about efforts to provide election officials with uniform and consistent training on issues of accessibility, election laws, voting equipment, and new registration systems. We're committed to ensuring the uniform application of election procedures in every county and precinct.

- We provided to county election officials a single, uniform curriculum for training poll workers.

HAVA funds were used in 2004 to develop, for the first time ever, a single, uniform curriculum for training poll workers on election day procedures. Election officials and poll workers used the same, consistent training resources. Furthermore, to address diverse learning styles, the training materials were made available in several media formats – video, CD-rom, and tabbed binders. These training resources were easily customized for county-specific needs.

- In addition to training poll workers and election officials, in 2004 we used HAVA funds to reach nearly 2 million voters with pro-active education that included 1.3 million voter guides sent to all Iowa households.

HAVA requires states to conduct extensive voter education efforts. Our Iowa voter guide included a voter registration form and Iowa's newly standardized absentee ballot request form, as well as information about voters' rights and responsibilities. Additionally, we utilized direct mail in areas implementing new voting systems to educate voters about how to use the new voting machines when they went to the polls.

- In 2004, we produced voter information posters in large-print formats that, for the first time ever, provided uniform procedural information for voters to view in every polling location.

The posters information highlighted voters' rights and responsibilities, provided contact information, and described new complaint procedures. These posters were displayed in every polling site throughout the state.

In Iowa, we also made it a priority to offer voting information in alternative formats and languages.

- In 2004, we produced Braille instruction booklets for every precinct to ensure that the information visible on the posters would also be available to sight-impaired voters.

- In 2004, we translated those instructions and HAVA-specific voting rights information into Spanish and Russian.

To make election information more accessible, some county election officials requested instructions for voters be translated into Spanish and Russian.

- The use of technology also proved useful in increasing voter access to election information. In 2004, we promoted our toll-free voter assistance phone line and our online election center.

Using our online center, Iowans were able to download absentee ballot request forms, voter registration forms, and a host of resources to help them through the election process. They could access a database to find their precinct locations and polling sites. Additionally, the Secretary of State's Office provided polling place locations to thousands of Iowans via telephone.

- Iowa felt it was also important to target its citizens in the military. In 2004, we provided specific information to 10,000 Iowa members serving in the National Guard and Reserve.

This information assisted National Guard and Reserve members and their families by providing information on how to request absentee ballots. The mailing included specific information for Iowans serving in the military and overseas to ensure that their votes would be received and counted.

All of these unprecedented outreach, training and education initiatives contributed to the highest level of voter participation in the history of our state.

- In 2004, the number of registered voters in Iowa reached an all-time high -- 2.1 million.

Ninety-five percent of Iowa citizens who are eligible to register as voters are registered. An additional 200,000 Iowans were registered to vote in 2004, as compared with 2000; and the number of registered voters has increased by 400,000 voters since 1996.

- In 2004, with the participation of newly registered voters, turnout reached a record high.

More than 1.5 million Iowans voted in the presidential election – an increase of 200,000 more than the previous presidential election. Iowa's turnout ranked sixth in the nation in 2004, up from the tenth spot four years ago.

In 2004, all Iowa voters felt HAVA's impact. The HAVA efforts undertaken were successful in providing more information to voters and, ultimately, increasing voter participation. The presidential contest was one of the closest in the country, with barely a 10,000-vote difference. Despite the close results and record turnout in Iowa's nearly 2,000 polling sites, we had no reports of unusually long lines. Furthermore, in Iowa there were no systemic errors, irregularities, re-counts or lawsuits.

Plans for Iowa HAVA Implementation in 2005-2006

Finally, Mr. Chairman, let me describe briefly our plans in Iowa to ensure the complete and timely implementation of HAVA by 2006.

First of all, we are very proud of our HAVA state plan and the extensive grassroots input that contributed to the plan. The local officials, technical experts, and a broad range of citizens will continue to be involved and engaged as we move into the most comprehensive phases of implementation. As we proceed, the level of active participation of our Statewide HAVA Advisory Committee and Financial Oversight Committee will intensify. We will continue to keep the Governor and the Iowa Legislature apprised of our decision-making and implementation progress.

Most importantly, though, we will take the plan of recommended action to local citizens in March and April as we conduct 12 additional regional meetings to solicit input and feedback. We also plan to visit each of Iowa's 99 counties over the next 12 months to ensure that implementation leads to complete compliance with HAVA.

Just as our planning process has been open and inclusive, we will continue to be diligent in our effort to provide ongoing information to the general public as our plans are being finalized. All HAVA reports and meeting summaries are posted on my office's Web site.

Our $30 million implementation budget can also be viewed at this site: www.sos.state.ia.us. The budget report shows how each dollar of federal HAVA funding will be spent. Let me briefly describe that plan, as it is divided into HAVA's core areas:

- Technology – we will use $17 million to purchase HAVA-compliant voting systems; and we have budgeted $6.5 million for the development and implementation of a new statewide voter registration system.
- Training – we will invest $1 million in uniform training for election officials and poll workers.
- Voter education – $2.4 million for Iowa voter education in 2005 and 2006.

Our administrative costs to oversee HAVA implementation are $800,000, or just over two percent of the Iowa HAVA budget.

Technology
We will focus on two areas of technology:

First, new voting machines – we will equip all precincts with HAVA-compliant machines, including machines that allow voters with disabilities to vote independently and privately.

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One of the issues raised by many States pertains to the timeline for receiving specific equipment standards from the Election Assistance Commission (EAC). In Iowa, we've made the choice to move sooner rather than later. For us, this means working with equipment vendors now and contractually putting the onus on them to ensure all equipment and software they supply is HAVA compliant once standards are put forth by the EAC.

We are developing an efficient and cost-effective purchasing process. Additionally, we have provided county officials with budget figures that show the specific HAVA dollars allocated to each county in order to purchase and replace voting equipment.

We meticulously developed an equipment funding formula that emphasizes equity, and provides counties with 90 percent or more of the costs for their new voting equipment. We have provided elected officials with the allocation formula so they can plan accordingly. The timing is crucial because in Iowa, counties must finalize their budgets for the next fiscal year by March 15.

The Secretary of State's Office will work closely with counties to assist them in purchasing new election equipment and successfully implementing the equipment for elections in the fall of 2005. For most counties, implementation will take place in waves, coinciding with either the school board elections that take place in September or the municipal elections held in November.

Second, we anticipate our statewide voter registration system to be completed on time and under budget. Development is well underway and on schedule. Pilot counties began migrating data from their old systems to the new statewide system earlier this week.

As required by HAVA, we're moving from 99 county voter registration systems that lack uniformity and compatibility, to a statewide system that utilizes 21st century data technology. The centralized statewide database will be utilized in all

of Iowa's 99 counties and will have features to integrate vital data from other state agencies, such as the Motor Vehicle Department and the judicial division.

The centralized voter registration database will ensure greater data integrity by removing ineligible voters from the list, flagging duplicate voters, and managing the verification process.

Training

The importance of training cannot be understated. Building on 2004 accomplishments, our plan supports an ongoing training program so that elections across Iowa are uniformly and consistently administered in compliance with HAVA and Iowa law.
Consistent and ongoing training for election officials will improve the election day experience for all voters.

Iowa's approach to election official training will continue to be centered on regular opportunities for learning at regional and statewide gatherings of county officials. We will continue to use HAVA funds to support the SEAT program for election official training. This will continue as a partnership with the Iowa State Association of County Auditors (ISACA), Iowa State University Extension and the Secretary of State's Office.

In addition to the SEAT program, future priorities for training include maintaining the accuracy and updating the poll worker training curriculum that were developed and implemented in the fall of 2004. With ongoing changes to law and administrative rules, it is important that the information be updated in a timely manner. As noted earlier, the materials were developed with an understanding of adult learning styles, using a variety of methods, and focusing on key election elements.

In 2005, additional materials and exercises will be added to the curriculum. Special attention will be given to train poll workers to provide sensitive service and support to voters with special needs, particularly voters with cultural and disability needs. This training will include persons with disabilities as trainers or presenters in these sessions to allow real-life experiences with common situations.

Education

Our efforts aimed at educating Iowa voters are ongoing. HAVA-related voter education in the years to come will focus on diverse activities to engage the general public, as well as the groups of voters with historically low turnout for elections.

As Iowans go about their daily lives, they will receive consistent, integrated messages about their voter rights and responsibilities, and the changes they will experience as a result of HAVA.

Efforts targeted to first-time voters include a variety of student-oriented programs such as our Capitol Project, Mock Caucus, and Mock Election. We are implementing a New Citizens Curriculum in the coming year to reach individuals who have recently become citizens of the United States.

Voter education efforts by our office will make information available to all voters in writing and on our Web site. The required postings will be maintained in the formats requested by county election officials. The Statewide HAVA Advisory Committee supports plans to inform voters of voter registration and absentee ballot deadlines through PSAs, billboards, Web site information, and other media to reach targeted voter groups such as first-time voters and low turnout groups.

The Statewide HAVA Advisory Committee unanimously recommended the production and mailing of an Iowa Voter Guide to each Iowa household in 2006. The Committee affirmed its view that a voter guide reaches all potential voters and informs them of registration requirements, voting procedures and election deadlines.

On election day, our office will continue to provide a fully staffed, toll-free resource line and online resources to provide polling place locations, answer voter questions, and assist voters.

This spring, twelve meetings will be held to gather more feedback from the public about their needs and to answer questions related to changes brought to their communities by HAVA. Special efforts will be made to reach people with disabilities, students, first-time voters, and those with culturally diverse experiences.

We are also planning to capitalize on Iowa's popular State Fair, held for 10 days each August. During the Fair, Iowans can learn how to vote and can practice with new voting equipment. The Fair draws approximately a million visitors each year. We will utilize the Fair as an informal learning laboratory for Iowans to become comfortable with the election process and new voting equipment.

While voter education opportunities are limitless, these examples are offered as an illustration of our broad approach to this critical element.

In summary, we have in place the plan and commitment to ensure that all components of HAVA – training, technology and education – will be successfully

implemented in Iowa by 2006. The changes we're making in Iowa's election system are far-reaching and will touch every Iowa voter – just as HAVA intended.

We recognize that we wouldn't be making reforms on this scale if it weren't for HAVA. So, I'm also here to thank you, Mr. Chairman, and Members of the Committee, for your leadership – thank you on behalf of all the citizens of Iowa for providing this tremendous opportunity to improve our election process.

More detailed information is conveyed in my written statement. Thank you for this time. I'll be glad to expand on any points and respond to your questions.

The CHAIRMAN. We have to go vote, and only have one vote, and will return if you can stay. I do want to mention as we go, and, again, we will come back, but it is so critical for the remaining $900 million to be funded; otherwise it is an unfunded mandate. We promised 3.9 billion. Congressman Hoyer, Speaker Hastert, Leader Pelosi, at that time Bill Young now we have, and Jerry Lewis as the Chairman from California, and we have to work to get that funding, because we can't turn around and say we have 3 billion, and we are 900 million short. We have to have the whole thing. And I am hoping—and it has to be done this year, too; otherwise I think you are going to be hurting to spend the rest of the money to implement HAVA.

So we will recess and be back.

[Recess.]

The CHAIRMAN. Committee will come to order. I want to thank the panel, the first panel and also your panel. Very impressive testimony.

I want to ask a couple of generic questions, and anybody who wants to respond, provisional voting and any comments on, you know, a need for any tweaking of the system—uniformity. I have never believed—and I was asked this many times obviously this year, especially coming from Ohio, the number one battleground State in the Nation—but I was asked several times about how our State counts, whether they count the provisional balloting. That wasn't our role. Our role was to make sure people got a provisional ballot so they would not be disenfranchised. I don't think I can sit here and say, Ohio, here is how you determine whether you count that or not. So that was where I was coming from.

But is there anything in the system that needs to be clarified on provisionals or any comments on that?

Ms. VIGIL-GIRON. Mr. Chairman, I am sure my colleagues will have their comments as well, but I think when you left in general open-ended for States to decide, I think that was a good thing, by the way. We are now having to tweak what our State law and the uniformity and how we certify those envelopes with the information to be able to even include those ballots into the count. That is something that we are working on. I have rulemaking authority in my State and can develop guidelines in regards to what they are actually looking for the certification of those provisional envelopes.

We are right now in the middle of a legislative session, and they are trying to determine if we should go and follow what Ohio did and just allow a voter to vote within their precinct only rather than what we do right now in New Mexico where you can vote anywhere in the county. The argument, of course, is that we have districted races, State legislators, representatives, State senators that are districted whose vote may not count if that voter votes outside of that line, that district, and therefore they will not be able to celebrate in achieving more votes in that election.

I even have a proposal from my attorney general that would address anywhere in the State you can vote. But then, of course, that would leave everything else on the bottom excluded to count those votes. I have got that argument.

So I don't know where my State is going to initially go in changing that aspect of where can I vote. Certainly the central data sys-

tems that we are going to be building, all of us, throughout the 50 States are going to assist us eventually; not today, probably not for the 2006 election or even the 2008. It is going to be very costly to have statewide voter data systems in place at all the polling places so that if a voter does present themselves, they can actually look up where you are registered to vote, and they can also look up if you voted early or absentee. It would be indicated immediately on that central voter data system.

We will probably see fewer provisional voters out there because of our voter education aspect, that piece of it, because we are going to be contacting registered voters and making sure they know exactly what their precinct number is, their polling place is, House district, Senate district, and, of course, merging that central data system with motor vehicle records as they do in Representative Miller's State, and also taxation of revenue, tracking people to their correct residences.

This central system is probably the most important piece of HAVA. Of course, everything works together, but that central voter data system is very, very important, and a lot of our States are very much behind in building them. So that is the other piece we are probably going to be asking Congress. I know the deadlines are set in stone, but we need to have some leeway in regards to building those central data systems.

The CHAIRMAN. I have one follow-up question that I wanted to ask you because of the way you do vote in New Mexico. You can go countywide. What do you do, for example, take my home county of Belmont County, and I live in St. Clairsville, and down on the river is a town called Bellaire. If you can vote countywide and I go down to Bellaire to vote even though I am from St. Clairsville, and I sit there and vote on the Bellaire school levy as a nonresident, how do you pull that out and separate it You surely run into this in New Mexico.

Ms. VIGIL-GIRON. Provisional ballots are hand-counted, and each one of those—after the certification of that envelope and that voter, and those envelopes are opened and matched to that voter, that precinct would be assigned to them or whatever, and anything that they could not take advantage of will not be counted, will be eliminated.

The CHAIRMAN. Have to go through by hand? I don't know how you do it. Shocks me that you could. And then people would start to say, wait a minute, I know they voted on that school levy.

Ms. VIGIL-GIRON. Every single one is challenged. Every single issue or candidate they are voting on is challenged.

Mr. CULVER. Mr. Chairman, I, as you noted, agree with you in terms of the question and concerns and challenges with respect to provisional balloting in 2004. I ended up asking the attorney general of Iowa for help in his interpretation of the Federal law. As you know, there were a lot of court cases across the country, and they weren't necessarily all making the same conclusion, although towards the end I believe they were getting more consistent in their rulings. But the tough part for me as the State commissioner of elections in Iowa was to try to follow the intent of the Federal law, which I believe was to help Americans vote.

We cannot forget that 4- to 6 million Americans in this country, according to Caltech and MIT, were disenfranchised in 2000. People that were eligible to vote, they were registered to vote and they showed up, and for all sorts of reasons, including showing up maybe at the wrong precinct or having some real confusion about where their precinct was, those votes weren't counted in 2000. So I think we were left in the States with an unclear understanding certainly of what your intent was.

There was some effort to reach out to the Department of Justice for some help and some interpretation. I believe early on in the process as we were preparing for 2004, they were urging the States to kind of draw their own conclusions. But I think this isn't a role perhaps where the Election Assistance Commission could help.

The resolution that was passed at NASS was brought up earlier. I personally support the continuation and authority of the Election Assistance Commission to establish guidelines, best practices and standards for—as we implement the Help America Vote Act. The EAC has accomplished a great deal. These four Commission members are uniquely gifted and talented and deserve enormous credit. And this is one area where I think they can, at a minimum, give the States some best practice ideas, some guidance, some direction. And I also agree that the States should have some rights as well in this process. But finally, I think it really comes down to training and voter education.

I wasn't able to finish in my formal remarks on the budget that I laid out in the HAVA plan. We have a million dollars earmarked for uniform training so that in Iowa, nearly 2,000 precincts, election officials and poll workers train people fairly so that they all understand the importance of ensuring election administration in Iowa is uniformly, fairly and consistently applied not only in Iowa, but I think across the country, because that was a problem in 2000. We didn't have uniformity and fairness and consistent application of State and Federal election law. And frankly, in 2004, we didn't have that with respect to provisional balloting, and it is very possible that as a result, tens of thousands of Americans were disenfranchised again. So this is an issue where we need some guidance.

And finally on voter education. In Iowa, we are going to earmark $2.4 million in voter education that will allow us to put together things like this voter guide that went to 1.3 million Iowan households that helps Iowans find their precincts so we don't have the provisional ballot challenges. We get them registered. This guide tells them how to register, when to register. It has a voter registration form in it. So I think the best practice and the solution at least initially is training and voter education, and that will hopefully reduce significantly the number of provisionals cast in the United States.

The CHAIRMAN. One follow-up question I had for you. Now, there were lawsuits all over the country, and I didn't join any of them. I was asked by people. I didn't go on any of them. I didn't want to start down that road. And—because I believe the courts will act. And if we think the courts have not acted correctly, we can come back. You know the fire drill here in the legislative process. But there was a suit, wasn't there? And I apologize for not knowing,

but there was an organization that filed on you and the attorney general

Mr. CULVER. That is correct, Mr. Chairman. There was a lawsuit filed brought by five Republican registered voters in Polk County against the secretary of state, a Democrat, and the attorney general, a Democrat, and the lawsuit was dismissed.

The CHAIRMAN. And that was on the right of provisionals?

Mr. CULVER. That was primarily——

The CHAIRMAN. Our secretary of state had one filed on him, too. Everybody did.

Mr. THORNBURGH. Badge of honor.

Mr. CULVER. Fortunately, we got through the process, and we were able to preserve the provisional ballots in case there was some sort of court challenge later and an effort would have been made later by a voter or a group to try to get those counted, but that never happened.

Mr. THORNBURGH. Mr. Chairman, if I may expand just for a moment on that. It is my opinion that the purpose of provisional balloting in the Help America Vote Act was to ensure that we never again disenfranchise voters. I believe that has occurred in that every voter, when they go to the polling place, now has the opportunity in which to cast a ballot. I also believe very strongly that it is up to the States to determine the qualifications of the voters within their own States. So I believe, in short, that we have done good work, and we should leave it where it is at.

The CHAIRMAN. I think we had a case, I think it was up in Jefferson County in Ohio, and a young man was home from college, and he went in and he said, I want to vote. And they said, you have already voted. He said, no, I didn't, and they showed him where he voted, and he demanded the provisional, and they found out he didn't vote. Someone had voted in his name. Now, had he not stuck to his guns, he wouldn't have had that ballot. But that serves the purpose; even though they are saying you did vote, he didn't. And so given the provisional allows that to be checked out.

Mr. THORNBURGH. That is correct. And it gives us the ability to go back and check the facts one more time at a place that is not as harried as the polling places on election day. And through that thoughtful resolution of those very issues, those who have the right to vote and those who are qualified to vote, their votes are counted. Should you not have the appropriate qualifications, then it is my opinion that vote should not be counted.

The CHAIRMAN. One thing we have to look past, is the actual deadline by midnight on election night where you have to have the winner or not. And I say that because some people were criticizing us in one of the States down South, I think it was, for possibly this would hold up an election for a few days or something. Well, you know, counting the provisionals, if it takes another couple of days, it takes another couple of days. And maybe people would not be happy with the outcome, their candidate didn't get elected, but at least these things were counted. So if it holds up an election for a few days, I don't think that is too much to ask.

Ms. VIGIL-GIRON. Mr. Chairman, may I talk to that? Actually in New Mexico, we have 21 days before we certify an election. And the majority of the States have a number of days even beyond 21 days

to certify elections. I believe it is either New York or another State has until December 2 to certify the results. Now, we don't—we have to talk about other paper ballots as well, it is not just the provisionals, and that certification process including or not excluding.

We have on the front end absentee voting. In New Mexico in 2000, we had 65,000 absentee ballots that were submitted. In this election we had 191,000 absentee ballots that had to be dealt with. That takes many, many days at the county level. It is not an overnight instantaneous gratification for any candidate or any issue that is being voted upon on election night. It is machine totals from that night that you can merge and tabulate and then begin the process of taking care of any other paper ballots, emergency ballots, in lieu of ballots, and making sure that those are either optically scanned, and if they are rejected from that optical scan reader, then you have to hand-count them. I mean, it takes many, many, many days.

We have three audits that we perform in the State of New Mexico. The first one is the county canvass or audit. They submit all their results to us and tapes. We do the second audit from the secretary of state's office. And then we have an independent auditing firm that checks what we have done. So this overnight concept would be really great if that were possible, but not with now the introduction of the provisionals on top of our absentee process.

The CHAIRMAN. I have a couple of more questions. I would like to ask one more question and yield to our Ranking Member so we can both ask questions. And it is in regards to you had some controversy and read about it—and I don't—I didn't follow up prior to this, which I should have, but you had some controversy in New Mexico, the ID, the implementation of the ID. And I think the articles had said that there was a technical interpretation. It was tough to implement the ID requirement. Did you want to comment on that?

Ms. VIGIL-GIRON. Thank you very much, Chairman Ney, Representative Millender-McDonald. As a matter of fact, the controversy was the misinterpretation of a certain party to expand voter identification to all voters, not just to the minimum requirements that we finally adopted based on the Help America Vote Act. First-time voters who registered to vote by mail who did not provide an ID at the front end, in other words mailed a photostat copy, will be asked at the polling place to produce some type of identification, and I outlined in my advertisements on voter identification and voter education what type of ID would be required. You can take this or this or this if you registered to vote by mail and did not provide it on the front end. So the controversy was they were misinterpreting that. I mean, it was very clear. And, of course, we were able to keep that particular law intact all the way up to the Supreme Court.

The CHAIRMAN. Because when we wrote the Help America Vote Act, we went on for weeks about this of what was an ID. And somebody said you have to have a government-approved ID. What if you don't drive or your State doesn't have a government ID? We went through this I don't know how many times, and we came out with the ID, or you could produce a bank slip or a wide variety of things.

I am not even sure in my own State, and I have to talk to people on the board of elections, what we did with that, because one of the problems that I think we had in our State is all the money—and we are going to have another hearing on this probably in the next X amount of weeks—but all the money that was spent out there, particularly 527s that spent this money to hire people to register people to vote, and in some cases because—and I am not complaining about registering people to vote—but when it was done by groups or advocacy groups or political parties, they are very meticulous. When you all of a sudden start to hire, in Ohio's case, thousands of people, and you are paying money out there, then people will tend to—and, you know, a person who has been out of work, they get hired for 10 bucks an hour, they are going to get as many slips as they can. And we had a lot of errors, as I understand, from our board of elections. I am not sure what we did about the IDs in these cases of hundreds of thousands of new registrants. I am not sure what we actually did about it in our own State.

Mr. ROKITA. In Indiana we had a similar issue, and it was resolved with a more conservative interpretation of the word "mail-in." because of the legislative dynamics in our State, we weren't able to get a more liberal definition; conservative definition being that mail-in means only when delivered to the clerk by someone from the United States Postal Service.

I can't believe that was the intent of Congress. Maybe you can help in this discussion today. But whether it is an employee of the U.S. Postal Service or a third party, it is the same issue, and that is no one got to see this person register to vote, and therein lies a huge opportunity for negligence, not to say that anything is intentional, but also direct fraud. And you saw it in some of the actions of the 527s this last election.

The CHAIRMAN. Your statement was about the post office had to deliver—I didn't follow that.

Mr. ROKITA. If you register for the first time by mail, you are required to show some kind of ID. Groups in our State were saying, well, because these batch of voter registration forms weren't delivered by the U.S. Postal Service, they weren't in the mail. But, in fact, they were delivered in person by a third person, who the clerk never got to see the original registrant.

It seems to me that is the intent; when you all decided mail-in, that that is what you wanted. But that is an issue that is out there, and it is a large issue because it allows 527s and other overzealous groups like that to do some things, and it allows for negligence, those who might not have any direct intention, but may leave voter registrations in the trunk of a car for too long and drop them the day after.

The CHAIRMAN. If you are a new registrant, you are supposed to produce some form of an ID.

Mr. ROKITA. If you are a first-time new registrant by mail. We couldn't resolve that issue what "by mail" meant.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman. And let me say that all of you are extraordinarily outstanding. Earlier comments did not pertain to you. I have—I do know of the gentlelady of New Mexico, and also send my best regards to my dear friend,

your great Governor, along with my good friend and your great Governor of Iowa. Both are friends and outstanding Governors.

I had an opportunity to chat a little bit with Secretary of State Culver, and you are outstanding yourself; and the gentlelady, first Latina and now the chairwoman and president of NASS. I congratulate all of you.

I understand—I talked with our county register recorder, and she spoke of the barrage of registration affidavits that she received in this last election. Certainly that goes right to you as well as Secretary of State Vigil-Giron that you spoke about, your absentee ballots that were just a tremendous number from the last election, Presidential election. It would seem to me like when you speak about this overload of ballots, albeit absentee or provisionals, and Secretary of State Culver talking about the need for uniformity, and EAC gave you best practices because they have gone all over the place to make sure they get the best practices, there certainly is a need to keep EAC, but—all indications—because they are your feet. They can move into other areas that you perhaps have no time to move into. And so I guess I am concerned about the resolution, given that they are mandated to do certain things. They recognize that they are not a regulatory system, and they have assured the chairman and I that they will not by any means venture into that area.

Your open letter to Members of Congress indicated that—and I am just reading portions—in this case, uniformity does not equal success, and yet Mr. Culver said we need uniformity. Expound on that for me in terms of your resolution, because if you are going to have one State doing one thing and another State doing another thing, it seems to me there has to be some semblance of uniformity so that no person—as I was going to—and I will speak to Secretary of State Thornburgh about disenfranchisement after this, but please talk to me about that, because it seems to me like some uniformity must be put in place irrespective of States, small or large, and that should be driven by EAC.

Ms. VIGIL-GIRON. Chairman Ney and Congresswoman Millender-McDonald, I appreciate Congressman Ney's comments early on by saying that he also does not believe that we should have the Federal Government overseeing elections, and that should not happen. The reaction or the fact that so many pieces of legislation are being written up and possibly even introduced right now as we speak in regards to election reform is, quite frankly, also reactions to probably what some of your Members of Congress are seeing out there.

Uniformity was an issue we discussed back in 2001 after the 2000 election, and we were very, very clear when we presented to you during a similar House Administration Committee. And the four areas that we were very clear about that you all incorporated and made sure to incorporate in the HAVA bill was the issue of a uniform voter data system, uniform data systems and standards that had to be produced by someone. The issue of voter education was another issue that was very, very clear, and poll worker training. That is what we came to you after—our election task force after the 2000 election. And I thank you, by the way, for taking those very clear messages that had to be addressed.

So uniformity is an issue, but in terms of uniformity across the State in regards to only the same type of voting machine, no, we can't have that. So that is why the standards right now are being created or at least partnered with what is already in place with the 2002 voting standards.

To address the issues of the paper trail aspect of it, that has to be addressed. Now, the disabled community, of course, will see an optical scan voting machine that has the capability of listening to their ballot, but then they have to actually take the ballot and insert it. And so that may be a problem for the blind voters out there. They may not be able to place it. So they are going to have to require assistance to be able to place their ballot to be counted and tabulated. That is a standard of a different type of voting machine that we cannot create.

And I, of course, also respect the work of the EAC and they are doing an excellent job. The fact that we are 9 months behind schedule to 11 months behind schedule, that was also something that was debated during the meeting where the resolution was presented. We were talking about the rulemaking aspects of the EAC, which, of course, was something that none of the secretaries wanted to see. It was not attacking the work of the EAC or the individual Commissioners. They are doing an excellent job. It was this reaction of all the legislation that is being introduced that I hope that you will, from this committee, and, of course, from the original sponsors of this legislation, keep at bay and make sure that it does not happen.

I believe that the EAC is doing a great job, and that they have a real purpose as a partner with the National Association of Secretaries of State, and we all recognize that and do see their relevance, and they have got a lot of work, and they do need your support as well.

Ms. MILLENDER-MCDONALD. So this resolution was an attention-getter, and it has certainly been given our attention. It appears to me that when another—it says NASS position on funding and authorization of the U.S. Election Assistance Commission, it is saying that duties assigned to them should be deferred to the National Institute of Standards and Technology. So it appears to me like, in essence, you are trying to say they should move out and let this group take over, which, in fact, this group has limited capabilities of doing that which you are talking about, education and training, that was so explicitly in HAVA.

And certainly I can see you getting a little concerned about the myriad of pieces of legislation that is coming before us as it does all the time after an election. But I will assure you with this chairman and this Ranking Member, we will try to find the nexus of amending some of—and improving upon HAVA and allowing you to have the flexibility that you must enjoy doing your job as secretaries of state.

Mr. Culver.

Mr. CULVER. Quickly, Congresswoman Millender-McDonald. I believe the NASS resolution arises from frustration with the lack of certainty in many HAVA areas and from the concern from some NASS members with the Federal intervention into what has traditionally been State rights or State issues.

I support funding to the EAC and the continuation of the EAC authority to assure American voters that every vote is properly counted, and everyone who is entitled under State law to vote has the opportunity. And so I support the continuation of authority for the EAC to give guidance, direction, guidelines and best practices along with other groups like the National Association of State Election Directors. This is a partnership. We need to bring everyone to the table, and Congress, to ensure that we never again have the problems that we had in this country in 2000.

You know, elections, as we knew them before, it is changed. This is the first time since 1789 that the Federal Government has had a direct role in election administration. So it is no surprise that there is some pushback with respect to this new landmark piece of Federal legislation that I believe is well-intended and necessary to help people vote. And we can't just simply go back to the States rights argument. That didn't work in 2000. We have 46 million people in this country that were disenfranchised. I don't think anyone in this room thinks that is okay. So we have to be very careful as we implement this to not create the same problems potentially all over again.

And I am not suggesting that it is necessarily a perfect fit either. I think this is a challenge, but we are all up to it. And I am glad we are having this hearing today because in the next 21 months in every State in this country, we better make darn sure that we protect voter rights in this country and don't repeat our past mistakes. And, Mr. Chairman, to your credit, I don't believe we are going to do it again, and we have a lot of work to do, and the EAC.

The CHAIRMAN. I appreciate your comments and also the comments that you made about keeping the legislation at bay, even though I was shocked, because I didn't know this was coming by the resolution when I found out about it. I think it was last night, or our staff told me. Even though I was surprised and didn't see it coming, and even though I don't technically agree with it, I understand your motivations. And you see a lot of these things. And I cannot tell you how many Members, both sides of the aisle, have come to me and they say, you need to do this. You need to investigate that. You need to do it now. And this was before the November election. And we could have had, you know, 5 days of hearings a week, and I think—I don't want to speak for Congressman Hoyer, but I think Steny Hoyer understood, as did other Members, but I think Steny Hoyer understood there was a balance there, and let us not open everything back up. We have to be cautious. We just don't say, well, there is nothing more that we look at or tweak. It is a horrific balance, but I believe we all can work through it.

Ms. MILLENDER-MCDONALD. With this chairman, we will. The one thing for sure, he is committed to making sure there is a balance.

We were also thrown aback that so many pieces of legislation came so quickly after we sat for the 109th Congress. So do rest assured he and I will keep our eyes open.

When we created HAVA, of course, we couldn't put everything in it. We put those things that you secretaries of state talked to us about. We go back to the drawing board with what you have just outlined today, and we will continue that process of improvement.

But we do feel, Mr. Culver, that everyone should come to the table with this.

And, of course, in the 1700s we had no idea that the Federal Government would be putting its mighty hand in this, but we are doing it very cautiously because we do recognize and respect States rights, and Federalism is certainly the mantra on the Majority side. So I do appreciate that.

Let me just say a few things here. Mr. Thornburgh, you mentioned that you did not see a widespread of—well, not a widespread—of voter disenfranchisement. However, I think you would agree with me in this room that when one voter is disenfranchised, the country is disenfranchised to a great degree. So let me thank you for your synthesizing all of your systems. I think that is what you stated in your opening statement. And all of your precincts are ADA-accessible. That is a tremendous success, and we applaud you on that.

But the provisional ballots—let me digress for a second. Ten hours of persons waiting in line ultimately had to leave without voting. The chairman and I and other Members of Congress get those calls. You do not necessarily get those. So we have to put into place—or you do get those?

Mr. THORNBURGH. Thank you for recognizing.

Ms. MILLENDER-MCDONALD. You don't get as many as we get perhaps, but you get your share of those. The provisional ballot is when all else fails, persons divert to that. What can we do to enhance that And you may have spoken to that before I came in from voting, because I was held up on the floor talking to other Members about this hearing. They saw the first part of it on C–SPAN. But what can we do to improve upon provisional ballots, Mr. Thornburgh?

Mr. THORNBURGH. If I may address that very quickly, and thank you for the compliments. I appreciate that.

Ms. MILLENDER-MCDONALD. You have one more coming. You have the Kids Voting USA. Now, that I really do like.

Mr. THORNBURGH. Let me just say perhaps this may be an area where me and my good friend the secretary of state of Iowa may disagree just slightly, where I heard discussion about the need for more Federal uniformity in a lot of different areas. I believe the standards should be, you tell me what you want accomplished, tell me what the objective is, tell me the goal and the desire, what you wish to see happen, and if I don't do that, there is lots of oversight that DOJ can bring on board to make sure that I perform the task next time that you would like to see happen.

I do agree with you that a single voter that is disenfranchised is too much. We have to do things to make sure that never happens again. The provisional ballot does allow—we have the mechanism to prevent that disenfranchisement from taking place right now with provisional voting. It is a blanket system. If there is a question about your status, you are allowed to cast a ballot.

When we talk about the uniformity, it is important to note in the State of Kansas, like in the State of New Mexico, if a person shows up at any polling place within that county, then they cast that provisional ballot, and we will count those offices for which they had the ability to vote, the countywide or statewide or national offices.

However, I don't believe that would work so well in districts in California, nor would it work well in districts in New York or perhaps in the chairman's Ohio.

We have to understand those elements, and that is where the ability for a State to determine the appropriate qualifications for a voter within their boundaries, I believe, is very important. So while we have the uniformity of a provisional ballot, the way in which we apply that as qualifications of voters I do believe is very important to maintain at the State level.

Mr. CULVER. Let me just add quickly, if I could, I agree with Secretary Thornburgh in terms of, yes, we do have now, thanks to the Help America Vote Act, a system in place to give people a provisional ballot if there is a question about their eligibility. The problem is do we count them. The title of the bill was not to help everyone get a ballot; it was to make sure that people get those ballots counted. That is where some sort of consistency and uniformity at some level is required.

I don't care if you live in Dade County or Des Moines. I wouldn't be satisfied if I were a voter in one precinct in one State and I had certain rights and protections, and my provisional may or may not be counted, and then somewhere else, you do the exact same thing, you don't have your ballot counted? That is arguably disenfranchisement.

I think our goal here is to count the ballots to help people vote; not to help them show up and give them a provisional, but to make sure their vote is counted and counted accurately. It is just not okay to hand out 2 million provisionals. The question is, are we going to treat those provisional ballots consistently and fairly in Florida or Kansas.

Ms. MILLENDER-MCDONALD. Mr. Culver, you have just made millions of voters feel very good, because that is what they want you to do. They want you to balance States rights with the right to vote. And you have to do that. You just must do that. This is a country of immigrants, and immigrants are becoming more and more involved in this political process, and so we must make sure that those who wish to vote and those who can vote can vote and their vote be counted.

The last thing I think I have here that each of you can speak to, what is the status—and let me just compliment Mr. Rokita. I haven't left you out. I wanted to compliment you on being one of the youngest to serve in the position of secretary of state. I want to give kudos to everyone today.

What is the status of your State in implementing a computerized statewide voter registration database? Each of you can answer that.

Mr. ROKITA. We are well on our way to meeting our deadline of January 1, 2006. Indiana was a State that didn't have a statewide voter file. It had 92 separate lists. And the success—and we are on target to meet it again by the 2006 deadline.

I can attribute the success in Indiana to the fact that we brought everyone to the table that we could. We had 28 members of our Vote Indiana team. We had 42 meetings. We kept getting the buy-in of the county clerks. I personally visited every county clerk in all 92 counties in their office twice so far being in office, and we

talk one on one. And we didn't need the EAC to tell us that, nor would I expect the Federal Government to tell me that, as a separate elected officeholder and, humbly say, leader. That is what leaders do, and you get the results.

Ms. MILLENDER-MCDONALD. Is it not the autonomy?

Mr. ROKITA. Statewide voter file is coming along fine. We have a pilot starting next week in 10 percent of our counties, and that is an attestation to the buy-in that we have of the local officials. Fifty percent of the counties wanted to be pilots just right out of the box.

I do want to make one very short comment with regard to the last discussion, because I think there is something missing here. I took a constitutional oath to defend the Constitution of the United States and of the State of Indiana. Voters' rights and States rights are not in conflict. Those are not mutually exclusive goals at all. In Indiana, we had a very small amount of provisional ballots even cast. It is not because they were turned away. We mainstreamed them right to the box through fail-safe procedures that protected the integrity of the ballot and the integrity of the vote.

And there is some disenfranchise that hasn't been mentioned here yet. It is just as equally bad to disenfranchise someone whose vote was cast but then stolen or diluted by someone who is not eligible to vote. Not only do we want to get every person to the polls and vote, but we only want do that when you are eligible to vote, when you are a citizen of the United States. And when we lose that distinction and lose that last clause of the sentence, I think we undermine the confidence of the voter, because there are millions of voters out there as well that would say, why go to the polls because they didn't even check to see that my signature matches. They let everyone else just cast their provisionals. And I heard the secretary of state say that he wants everyone to be able to cast provisional ballots. They are not connecting the eligibility factor, and I think that undermines confidence as well.

Ms. MILLENDER-MCDONALD. That is very true. However, you know there are a lot of registered voters, citizens of this country, who did not have that opportunity to vote. And so we cannot lose sight on that because irrespective—and I hear what you are saying and agree with what you have said, but just education is the key here. And I think a couple of you said that, education is the key, because there are many elderly folks who really don't know the essence of provisional voting if something happens at their precincts. But thank you for those comments.

Ms. VIGIL-GIRON. Thank you.

In New Mexico, my first term in office in 1987, we were able to get an automated voter registration system in 33 counties where 33 county clerks would report all of their voter registrations on a quarterly basis to my office. This was back in 1987. In 1999, my second term in office, we decided that we needed to go with the new technology and start building a central data system that would report to my office on maybe a weekly time period. And so we began the process with the State committing $2 million of their general fund money to begin the building of that central voter data system.

In 2002, when we passed the Help America Vote Act you all passed and signed into law in October, it became a different animal where it would be a real-time, on-line system. So going back to our vendor, we started building this new software, and so we have been in that process of building. We have all but four counties that are hooked into the central data system, and we will be up and running 100 percent to be able to check the felon files correctly, the deceased voters correctly, motor vehicle records. We will be able to identify 18-year-olds that need to be sent a voter registration application and instruction and application materials by April of this year.

So I am very, very pleased that ultimately I think what we want to see is that all States are hooked up to a central data system where, across State lines, we can remove duplicate voters that should not remain on State lists if they are not living there and want to be registered to vote in their most current residence. So I am excited about what New Mexico is doing.

Ms. MILLENDER-MCDONALD. Kudos to you for an outstanding system.

Mr. Thornburgh.

Mr. THORNBURGH. I would like to say that I believe the State of Kansas is well on its way to a central voter registration system. There is a great deal of work to be done throughout America to implement what is a very tough element on this.

Just probably for my own purposes, let me explain what I hope is the purity of my philosophy. You may have heard resistance on my part to too much Federal oversight. And at the same time, I had that same resistance to too much State oversight over the counties as well. And what we have tried to do in the central voter registration system is to ensure that the counties were the ones that designed this system. They know what the people who are doing the keystrokes or the work they are actually doing on that day, so they helped us design the system what we needed to accomplish and do. We provided the broad guidelines of what needs to happen within the system. The counties designed it through a wonderful task force we had put together for that.

The bottom line is because the counties designed the system, the State provided the incentives, we had all 105 counties in the State of Kansas. Every single county voluntarily came on board with a county-designed election management system. That means they had to give up what they know and what they trust, buy in—not buy in, because it is being provided, but to become part of a statewide system because it was done with their ownership as well as with the incentives.

I believe the State of Kansas is right on board to having a very uniquely designed system that will accomplish exactly what you set out for us to do through HAVA.

Ms. MILLENDER-MCDONALD. Mr. Culver.

Mr. CULVER. The only other comment that I have, and I want to state this for the record, and it goes back to what Congressman and—Chairman Ney said about election results. You know, obviously, I think we can all agree that the Associated Press and CNN and other organizations just didn't get it right in 2000. And then again in 2004, we had some questions and problems with exit poll-

ing and projections. So I would ask Congress and maybe this committee, once again, to help us solve this problem of overzealously trying to figure out who won or lost elections.

And I agree with Chairman Ney that we have to let the process work. And in Iowa, along with New Mexico, we were both extremely competitive, two of the closest States in the Nation, and there were some question about was there a delay in Iowa with respect to reporting or calling the race. And here is what happened quickly. As of noon the day after the election, county commissioners of elections in Iowa unofficially informed us that over 40,000 absentee ballots were still outstanding. Also, 10- to 15,000 provisional ballots were yet to be counted or sorted through. At that time, President Bush led unofficially by about 13,000 votes. Iowa election laws spell out the process and the time lines for counting these ballots. Iowa—the secretary of state in Iowa doesn't call the race. We count the ballots. We certify that the ballots were counted and counted accurately. And local election boards in Iowa don't start counting absentee ballots and provisional ballots until the Thursday at noon following the Tuesday election. So we all had to wait and see and be patient with respect to who ultimately won and lost.

So Iowa's election laws specifically lay out rules with respect to how we handle absentee ballots by mail, and in Iowa, they can be counted all the way until the following Monday at noon as long as they are postmarked prior to election day. So maybe this committee, and with your leadership, Chairman Ney, and your leadership, Congresswoman Millender-McDonald, we can kind of look at that as we move into the 2006 and 2008 cycles, because we still have to make sure that voters across this country realize and this is a States rights issue, that States handle counting of ballots a little bit differently in terms of their time lines and when they count provisional ballots, when they count absentee ballots. But it certainly potentially could lead to a lot of frustration and anger, once again, if, for example, in 2006 or 2008 we have a few States that are too close to call, and voters get a little uneasy about why they have to wait.

And frankly, there was some misinformation out in 2004 about what was going on in Iowa, and it created an unnecessary rather political environment that Iowans certainly didn't deserve, Republicans, Democrats and Independents, and the 1.5 million people who voted that day.

Ms. MILLENDER-MCDONALD. Your jobs are not easy. We appreciate the work that you do. We appreciate the work that you do, and we are here to assist you. Thank you so much.

The CHAIRMAN. I just have a couple of quick questions. In our Ohio Legislature, they have basically told the secretary of state, you have to have a paper trail, so we are a State that requires that. And on the one hand—and they have bound our Secretary of State's hands. He is being in a way pushed towards a decision now on the optical scan. Of course, that makes another problem because there is no standard yet on optical scan that I know of for the issue of if a person has a form of disability. That means Ohio is probably going to have to have a bifurcated system of if they go with optical scans, and then one machine is going to be a DRE, and then you

have to have one backup, because one pure mandate in HAVA is a machine per precinct has to be; not should be, but has to be. So if Ohio goes to optical scan, and you have six machines in precinct C, and one of them is a DRE, and that one machine breaks down, what are you going to do And if you have all DREs, and one breaks down—so that is another issue. Ohio will probably have to have two different types of machines.

Was there anything done in your legislatures that the legislatures came back and said you must do this and mandated certain machines?

Ms. VIGIL-GIRON. In New Mexico they are looking at this issue right now. My Governor seems to think that having a paper trail is very important. Most of our voting machines right now must follow the voting standards of 2002, which require them to have ballot image retention. I will have to remove a certain percentage out of my State. They were grandfathered in and allowed to stay in the State of New Mexico, so we are going to be moving those out very soon because they do not produce that ballot image retention.

Paper trail can be defined many different ways. You are hearing the voter-verified paper trail is one system where they can actually scroll and see the way that they have voted. And it was implied here a while ago that you can manipulate anything for the final totals. You can go ahead and print it out the way they voted it, but then manipulate it so that it says something else. That is one system.

Then you have the paper audit trail that is already produced from the majority of our machines. There are tapes, five tapes, that are produced at the end of the night from every single voting machine posted outside of the polling place for the public to view, and then the remainder of the tapes sent to the various areas where they must be verified and tabulated and kept as part of the inventory. And then you have the paper-verified paper trail that an optical scan has. I mean, you have a ballot that you have voted, and you have inserted into that optical scan reader, and if you voted right, it will accept it. If you overvoted, it will reject it. You will be given another ballot to be able to vote again with instructions.

So you are looking at just different kinds of semantics, I guess, out there and different kinds of systems. We will have to have a DRE for HAVA-compliant, one per polling place. We will have to do that. We currently have those type of voting machine systems that were certified by the State Voting Standards Committee, and we adopt the Federal standards, and it is mandatory that we adopt them. For any voting machine company to be tested and certified by those testing authorities, they must get the certification in order to apply to the State of New Mexico, and then we test them based on our election laws. They must be stand-alone systems that can't be hooked up to one another. They cannot transmit the results through the Internet. That is against State law.

We are limited to a certain number of voting machines that have been certified for the State of New Mexico. If we add that extra component of the paper-verified voting machine system, we will want to make sure that the standards that are being created that do address those different types of paper audit trails or verified

paper trail, that we incorporate those if we are even going to include those in State law.

Mr. THORNBURGH. If I may add briefly to that, I believe the discussion of verified voter paper trails is a very important one to have. My concern, quite frankly, if we drive a specific technology through statute, if we specifically say each voter has to be given a piece of paper, that eliminates any future enhancements that may take place. If we talk about each voter needs to be able to verify that their vote was counted in the way in which it was cast, then whatever technology becomes available 5 years from now, we can take advantage of that great technology as well. I don't pretend to know a great deal of technology, but I know there are great minds out there that are thinking of ways to achieve this. If you tie our hands by saying it has to be a piece of paper that we give to that particular voter, I think you really have tied our hands.

The CHAIRMAN. I am sorry I brought up the word "paper trail." Linda Lamone is here from Maryland, director of elections, who helped us in the beginning, too, with HAVA to get us to where we are at today, and Maryland addressed this issue of checking the machines. So that can be addressed, and I think you went about that the right way.

I have talked with Congressman Larson about the fact that—you know, of what they do with the casino equipment. But I did argue at the time on the paper trail, if you can fix the machine, then you can fix the machine to fix the paper trail. So the issue is making sure the machine has its integrity, I think, is a critical part to it.

But the other thing, too, and you hit something on the head that really had scared me. I went over to see Senator Enzi, and he showed me the machine where it is all encased. If you have that paper laying out there, and the next person says, that is mine, I want to take that with me, then you are going to have that kind of argument, and also the issue of how secret does the ballot then become. And if you take this, and somebody is standing outside the door and has some type of authority over you to say, how did you vote, let me see what you did, those are all issues that arose about the paper issue. Who handles the paper? What do you do with it afterwards? But that doesn't mean you still shouldn't have verification of machines. We have to be obviously prudent about that so that nothing is fixed at the point of a company being able to rig it.

Mr. CULVER. Mr. Chairman, I think that people of this country and the voters of the United States should decide what type of voting machines they want. We have up to $4 billion on the table thanks to you and members of this committee and the House and the Senate. We need to listen closely to what the voters in our States want, and this isn't a problem. The manufacturers, the vendors, I guarantee you, with $4 billion available, they will provide what their customers and voters want.

I think we ought to go out in the field in every county and cities across our States and listen to what the voters want. We need to restore voter confidence in this country. It is critically important. Look what happened in Washington State, for example, in the Governor's race. This is important. They did a machine recount with precinct count optical ballots. The machine recount said pretty

much the same thing that the unofficial results concluded. It wasn't until there was a hand recount that they picked up a—hundreds of votes, because marks, ovals, were not darkened enough. They were circled. They were checked. And so the election recount board in Washington State, to their credit, and Secretary of State Reed did, I think, a very honorable job; it wasn't until they went through each and every one of those hand paper ballots, those optical precinct count ballots, that they realized that they were wrong and they didn't count eligible votes.

So I am not sure precisely what the answer is, but we need to, again, make sure that we count every vote as it was intended, and that is sometimes very hard when it comes to human error or faulty equipment or pencils that aren't sharpened enough or misinformation about the instructions. I mean, we see a lot of voter errors, but we also see errors on the side of—sometimes on the election official side of the equation. So this is critically important, and I am glad we are having the discussion today. And I think we should do exactly what the voters of this country demand with respect to a paper trail or not a paper trail.

The CHAIRMAN. On the other side of the aisle, with respect to Washington State, Republicans will tell you that votes were counted and then recounted, and then votes were added until the Democrats achieved what they wanted. I am giving the other side of this. I don't pretend to know the whole story there, but I am just saying that, and I am not saying whether that is all correct or not.

Having said that, though, let's use that as an example, and forget what I said for a second, but use it as an example that if this was clarified in the beginning whether those 600 votes or 700 should have been—in the first place should have been counted, there wouldn't even be an argument. Maybe those 537 votes should have been counted and weren't. But if we can continue to keep during these controversies—keep clarifying this and work now to clarify in the future the magic 537 or 600 votes or whatever it is in the state, we can hopefully avoid some of these controversies.

The one thing that I wanted to say, and I imagine down the road in the future, you know, it will be like an ATM machine in a sense—you know, we can go over to Italy. And in Rome I can insert my card, and the gentlelady can insert her card, and we feel secure and confident to get our money, and it knows who I am with my code and things. Down the road, I could see the possibility of voting statewide because you are going to a machine, you know, you do the iris scan, and then it says Bob Ney. And you happen to be in Cleveland, Ohio, but you can vote in St. Clairsville for the school race, and that would work.

Because we are not to that point, the one thing I wanted to again say that confuses me, I don't know how we would do it, to your point, Secretary of State Culver. I don't know how we as a Federal Government tell you how to count that provisional ballot. But I don't know how we would go in and write one rule for every state, because when do people register to vote in your state versus New Mexico? It is worth discussing, but I am not sure how we do it.

My last question. I asked about two controversies you all had. How about the other two secretaries of state? Did you have any-

thing that was—I didn't read anything on the wire service, but did you have something that was horrific?

Mr. THORNBURGH. Let me just say I really love good boring Kansas elections. There were no major controversies in the State of Kansas. We had local issues, and there were recounts, and there were a number of races decided by a handful of votes, but the process in place ensured that everyone who was eligible to vote had the right to vote. Those who cast provisional ballots, those ballots were counted, and we ultimately came to the right decision based upon the vote of the people.

Mr. ROKITA. Mr. Chairman, Indiana had a very good election process. In my original comments, we have not had anywhere in this country or this world a perfect election, but people had equal access and opportunity to vote. We haven't had lawsuits. We haven't had planeloads of lawyers or media. And we are not a battleground State.

It goes to a larger point, but again, we are kind of glossing over the constitutional aspects of this. We are coming to a point in this Republic, in this democratic process, where there is so much power to be retained or gained that people are getting to the point where anything can be said or done to gain an electoral advantage. We, as leaders at the State level, and this Congress, and everywhere who support to defend the Constitution need to remember what Congressman Ehlers said about the Nixon race. At some point, there was a dispute, and it was a very close race, but for the good of the country and confidence of voters, it was amicably decided, and the business of the land went on. And we have to get back as a group to that concept, and it can't necessarily come from Washington, DC.

The CHAIRMAN. I hope one of you are the battleground next time instead of us, although we did appreciate 50 some thousand people of both sides of the aisle that visited our state for 6 months and fed our economy. I knew there was something wrong when I was down in St. Clairsville with Bob Evans, and I walked in, and this guy had a hat on, and it said, "Coal is Dirty," and considering that we are the highest coal-producing county. And I said, what are you doing He said, I am here campaigning for Kerry. And I said, "That is a good hat, keep wearing that." But we had people from both sides of the aisle visiting our state.

Ms. MILLENDER-MCDONALD. Mr. Chairman, let me just say that this has been absolutely an excellent hearing. We thank you so much for convening this hearing because this hearing has really enlightened me to a lot of things. This committee, and I think I can speak for the Members of Congress, we are not by any means trying to usurp the authority of the States. We are trying to see whether we can answer to the call of voters those who have been disenfranchised, and the operative word is access. Let us not forget that. Thank you so much.

The CHAIRMAN. I want to thank the gentlelady and close by thanking again the first panel and also you for your wonderful testimony and great job you all are doing. And I really believe this brought a lot to the process today. And thank the gentlelady.

I ask unanimous consent that Members and witnesses have 7 legislative days to submit material into the record, and for those

statements and materials to be entered into the appropriate place in the record. Without objection, the material will be so entered.

The CHAIRMAN. I ask unanimous consent that staff be authorized to make technical and conforming changes on all matters considered by the Committee at today's hearing. Without objection, so ordered.

Having completed our business for today and for this hearing, the Committee is hereby adjourned.

[Whereupon, at 2 p.m., the committee was adjourned.]