AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

HEARING ON OVERSIGHT OF THE ELECTION ASSISTANCE COMMISSION

HEARING

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JUNE 8, 2006

Printed for the use of the Committee on House Administration

U.S. GOVERNMENT PRINTING OFFICE

28–926 WASHINGTON : 2006

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON HOUSE ADMINISTRATION

VERNON EHLERS, *Chairman*

ROBERT W. NEY, Ohio
JOHN L. MICA, Florida
CANDICE MILLER, Michigan
JOHN T. DOOLITTLE, California
THOMAS M. REYNOLDS, New York

JUANITA MILLENDER-McDONALD, California
Ranking Minority Member
ROBERT A BRADY, Pennsylvania
ZOE LOFGREN, California

PROFESSIONAL STAFF

WILL PLASTER, *Staff Director*
GEORGE SHEVLIN, *Minority Staff Director*

OVERSIGHT OF THE ELECTION ASSISTANCE COMMISSION

THURSDAY, JUNE 8, 2006

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

The committee met, pursuant to call, at 10 a.m., in room 1310, Longworth House Office Building, Hon. Vernon J. Ehlers (chairman of the committee) presiding.

Present: Representatives Ehlers, Ney, Mica, Miller and Millender-McDonald.

Staff Present: Paul Vinovich, Counsel; Audrey Perry, Counsel; Peter Sloan, Clerk; Thomas Hicks, Minority Professional Staff Member; George Shevlin, Minority Staff Director; Janelle Hu, Minority Professional Staff Member; and Denise Mixon, Minority Communications Director.

The CHAIRMAN. Good morning, ladies and gentlemen. Today the House Administration Committee will come to order. I am very pleased to welcome some very special guests, but I would like to remind members of our audience here today to please silence your phones, which I am doing right now, and pagers and other electronic equipment which will cause interruption to the hearing, except those pagers which will caution us to vote, because if that happens, we must leave the chamber and vote. Thank you very much.

Today the Committee convenes an important oversight hearing on the Election Assistance Commission, better known as the EAC. The EAC, which was created by the Help America Vote Act of 2002, better known as HAVA, was established to assist the States in their efforts to comply with our Federal election laws. That mission will truly be put to the test this year as the upcoming midterm election marks the first in which the states must comply with all of the HAVA requirements.

Under HAVA, states and localities must comply with Federal requirements and are provided with Federal funds to help them meet these problems. Over $3 billion has been appropriated and distributed to the states to help them comply with the law, a significant investment by any standard.

HAVA created the EAC to distribute these funds and to provide guidance to the states on methods of compliance. While some of the HAVA requirements were in place for our last general election in 2004, this year marks the first in which the states must comply with all of the HAVA requirements. In particular, several new provisions, including the voting system, disability access, and statewide registration requirements, are now in effect for the first time.

These important provisions have forced some changes to be made at the state and local level. Not surprisingly, some of the local officials trying to make theses changes have encountered some difficulties, which is an increasing area of concern for this Committee as the midterm election is now fewer than six months away.

Many states and localities are still struggling to comply with HAVA prior to their primaries and the November general election and are looking to the EAC for assistance to ensure that they meet all requirements under the law.

Today's hearing gives us an opportunity to hear from the EAC Commissioners about their efforts to help states and localities implement HAVA. It also gives us a chance to hear from them about what problems they are seeing and what is being done to solve them; and, of course, we are interested in knowing whether additional legislation is going to be needed to resolve some of these problems.

I thank the Commissioners for joining us today, and I look forward to hearing their testimony.

At this time I would like to recognize the Ranking Member, Ms. Millender-McDonald, for any opening remarks she may have.

Ms. MILLENDER-MCDONALD. Thank you so much, Mr. Chairman, and good morning to you, and good morning to this outstanding Commission.

Mr. Chairman, let me thank you for calling this very important oversight hearing. It is so timely at this point as we go into midterm election. The Election Assistance Commission, EAC, was formed after the 2000 Presidential election through the Help America Vote Act, which is HAVA, to serve as a national clearinghouse for all matters involving elections administration.

Pursuant to HAVA, the EAC has distributed billions of dollars, as the Chairman stated, to the States to improve the facilitation of elections operations. In the short period of the EAC's existence, our elections have benefited from the guidance, research and standards provided by this great Commission.

Nevertheless, improvements are still needed as we move forward. This is a work in progress. HAVA is proving to be a solid foundation upon which we can institute further electoral improvements. HAVA made it easier for voters to cast a vote and harder for people to knowingly commit fraud.

But despite all of the overall success of HAVA, the 2004 elections revealed several high-profile failures in the system that resulted in a few areas we need to address. This committee held an oversight hearing in Ohio, where we listened to testimony and read numerous reports of voters waiting in line for more than 10 hours to cast a ballot and over 100,000 provisional ballots going uncounted. This situation should not happen in the 21st century. Airlines and TSA move millions of passengers a day from the curb to their final destination with fewer problems.

Mr. Chairman, there is also a report from the Rolling Stone that I would like to ask to be included in the record by unanimous consent.

The CHAIRMAN. Without objection, so ordered.

[The information follows:]

URL: http://www.rollingstone.com/news/story/10432334/was_the_2004_election_stolen

Rollingstone.com

Was the 2004 Election Stolen?

Republicans prevented more than 350,000 voters in Ohio from casting ballots or having their votes counted -- enough to have put John Kerry in the White House.
BY ROBERT F. KENNEDY JR.

The complete article, with Web-only citations, follows. Talk about it in our National Affairs blog, or see exclusive documents, sources, charts and commentary.

Like many Americans, I spent the evening of the 2004 election watching the returns on television and wondering how the exit polls, which predicted an overwhelming victory for John Kerry, had gotten it so wrong. By midnight, the official tallies showed a decisive lead for George Bush -- and the next day, lacking enough legal evidence to contest the results, Kerry conceded. Republicans derided anyone who expressed doubts about Bush's victory as nut cases in "tinfoil hats," while the national media, with few exceptions, did little to question the validity of the election. *The Washington Post* immediately dismissed allegations of fraud as "conspiracy theories,"(1) and *The New York Times* declared that "there is no evidence of vote theft or errors on a large scale."(2)

But despite the media blackout, indications continued to emerge that something deeply troubling had taken place in 2004. Nearly half of the 6 million American voters living abroad(3) never received their ballots -- or received them too late to vote(4) -- after the Pentagon unaccountably shut down a state-of-the-art Web site used to file overseas registrations.(5) A consulting firm called Sproul & Associates, which was hired by the Republican National Committee to register voters in six battleground states,(6) was discovered shredding Democratic registrations.(7) In New Mexico, which was decided by 5,988 votes,(8) malfunctioning machines mysteriously failed to properly register a presidential vote on more than 20,000 ballots.(9) Nationwide, according to the federal commission charged with implementing election reforms, as many as 1 million ballots were spoiled by faulty voting equipment -- roughly one for every 100 cast.(10)

The reports were especially disturbing in Ohio, the critical battleground state that clinched Bush's victory in the electoral college. Officials there purged tens of thousands of eligible voters from the rolls, neglected to process registration cards generated by Democratic voter drives, shortchanged Democratic precincts when they allocated voting machines and illegally derailed a recount that could have given Kerry the presidency. A precinct in an evangelical church in Miami County recorded an impossibly high turnout of ninety-eight percent, while a polling place in inner-city Cleveland recorded an equally impossible turnout of only seven percent. In Warren County, GOP election officials even

invented a nonexistent terrorist threat to bar the media from monitoring the official vote count.(11)

Any election, of course, will have anomalies. America's voting system is a messy patchwork of polling rules run mostly by county and city officials. "We didn't have one election for president in 2004," says Robert Pastor, who directs the Center for Democracy and Election Management at American University. "We didn't have fifty elections. We actually had 13,000 elections run by 13,000 independent, quasi-sovereign counties and municipalities."

But what is most anomalous about the irregularities in 2004 was their decidedly partisan bent: Almost without exception they hurt John Kerry and benefited George Bush. After carefully examining the evidence, I've become convinced that the president's party mounted a massive, coordinated campaign to subvert the will of the people in 2004. Across the country, Republican election officials and party stalwarts employed a wide range of illegal and unethical tactics to fix the election. A review of the available data reveals that in Ohio alone, at least 357,000 voters, the overwhelming majority of them Democratic, were prevented from casting ballots or did not have their votes counted in 2004(12) -- more than enough to shift the results of an election decided by 118,601 votes.(13) (See Ohio's Missing Votes) In what may be the single most astounding fact from the election, *one in every four* Ohio citizens who registered to vote in 2004 showed up at the polls only to discover that they were not listed on the rolls, thanks to GOP efforts to stem the unprecedented flood of Democrats eager to cast ballots.(14) And that doesn?t even take into account the troubling evidence of outright fraud, which indicates that upwards of 80,000 votes for Kerry were counted instead for Bush. That alone is a swing of more than 160,000 votes -- enough to have put John Kerry in the White House.(15)

"It was terrible," says Sen. Christopher Dodd, who helped craft reforms in 2002 that were supposed to prevent such electoral abuses. "People waiting in line for twelve hours to cast their ballots, people not being allowed to vote because they were in the wrong precinct -- it was an outrage. In Ohio, you had a secretary of state who was determined to guarantee a Republican outcome. I'm terribly disheartened."

Indeed, the extent of the GOP's effort to rig the vote shocked even the most experienced observers of American elections. "Ohio was as dirty an election as America has ever seen," Lou Harris, the father of modern political polling, told me. "You look at the turnout and votes in individual precincts, compared to the historic patterns in those counties, and you can tell where the discrepancies are. They stand out like a sore thumb."

I. The Exit Polls

The first indication that something was gravely amiss on November 2nd, 2004, was the inexplicable discrepancies between exit polls and actual vote counts. Polls in thirty states weren't just off the mark -- they deviated to an extent that cannot be accounted for by their margin of error. In all but four states, the discrepancy favored President Bush.(16)

Over the past decades, exit polling has evolved into an exact science. Indeed, among pollsters and statisticians, such surveys are thought to be the most reliable. Unlike pre-election polls, in which voters are asked to predict their own behavior at some point in the future, exit polls ask voters leaving the voting booth to report an action they just executed. The results are exquisitely accurate: Exit polls in Germany, for example, have never missed the mark by more than three-tenths of one percent.(17) "Exit polls are almost never wrong," Dick Morris, a political consultant who has worked for both Republicans and Democrats, noted after the 2004 vote. Such surveys are "so reliable," he added, "that they are used as guides to the relative honesty of elections in Third World countries."(18) In 2003, vote tampering revealed by exit polling in the Republic of Georgia forced Eduard Shevardnadze to step down.(19) And in November 2004, exit polling in the Ukraine -- paid for by the Bush administration -- exposed election fraud that denied Viktor Yushchenko the presidency.(20)

But that same month, when exit polls revealed disturbing disparities in the U.S. election, the six media organizations that had commissioned the survey treated its very existence as an embarrassment. Instead of treating the discrepancies as a story meriting investigation, the networks scrubbed the offending results from their Web sites and substituted them with "corrected" numbers that had been weighted, retroactively, to match the official vote count. Rather than finding fault with the election results, the mainstream media preferred to dismiss the polls as flawed.(21)

"The people who ran the exit polling, and all those of us who were their clients, recognized that it was deeply flawed," says Tom Brokaw, who served as anchor for NBC News during the 2004 election. "They were really screwed up -- the old models just don't work anymore. I would not go on the air with them again."

In fact, the exit poll created for the 2004 election was designed to be the most reliable voter survey in history. The six news organizations -- running the ideological gamut from CBS to Fox News -- retained Edison Media Research and Mitofsky International,(22) whose principal, Warren Mitofsky, pioneered the exit poll for CBS in 1967(23) and is widely credited with assuring the credibility of Mexico's elections in 1994.(24) For its nationwide poll, Edison/Mitofsky selected a random subsample of 12,219 voters(25) -- approximately six times larger than those normally used in national polls(26) -- driving the margin of error down to approximately plus or minus one percent.(27)

On the evening of the vote, reporters at each of the major networks were briefed by pollsters at 7:54 p.m. Kerry, they were informed, had an insurmountable lead and would win by a rout: at least 309 electoral votes to Bush's 174, with fifty-five too close to call.(28) In London, Prime Minister Tony Blair went to bed contemplating his relationship with President-elect Kerry.(29)

As the last polling stations closed on the West Coast, exit polls showed Kerry ahead in ten of eleven battleground states -- including commanding leads in Ohio and Florida -- and winning by a million and a half votes nationally. The exit polls even showed Kerry breathing down Bush's neck in supposed GOP strongholds Virginia and North

Carolina.(30) Against these numbers, the statistical likelihood of Bush winning was less than one in 450,000.(31) "Either the exit polls, by and large, are completely wrong," a Fox News analyst declared, "or George Bush loses."(32)

But as the evening progressed, official tallies began to show implausible disparities -- as much as 9.5 percent -- with the exit polls. In ten of the eleven battleground states, the tallied margins departed from what the polls had predicted. In every case, the shift favored Bush. Based on exit polls, CNN had predicted Kerry defeating Bush in Ohio by a margin of 4.2 percentage points. Instead, election results showed Bush winning the state by 2.5 percent. Bush also tallied 6.5 percent more than the polls had predicted in Pennsylvania, and 4.9 percent more in Florida.(33)

According to Steven F. Freeman, a visiting scholar at the University of Pennsylvania who specializes in research methodology, the odds against all three of those shifts occurring in concert are one in 660,000. "As much as we can say in sound science that something is impossible," he says, "it is impossible that the discrepancies between predicted and actual vote count in the three critical battleground states of the 2004 election could have been due to chance or random error." (See The Tale of the Exit Polls)

Puzzled by the discrepancies, Freeman laboriously examined the raw polling data released by Edison/Mitofsky in January 2005. "I'm not even political -- I despise the Democrats," he says. "I'm a survey expert. I got into this because I was mystified about how the exit polls could have been so wrong." In his forthcoming book, *Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count*, Freeman lays out a statistical analysis of the polls that is deeply troubling.

In its official postmortem report issued two months after the election, Edison/Mitofsky was unable to identify any flaw in its methodology -- so the pollsters, in essence, invented one for the electorate. According to Mitofsky, Bush partisans were simply disinclined to talk to exit pollsters on November 2nd(34) -- displaying a heretofore unknown and undocumented aversion that skewed the polls in Kerry's favor by a margin of 6.5 percent nationwide.(35)

Industry peers didn't buy it. John Zogby, one of the nation's leading pollsters, told me that Mitofsky's "reluctant responder" hypothesis is "preposterous."(36) Even Mitofsky, in his official report, underscored the hollowness of his theory: "It is difficult to pinpoint precisely the reasons that, in general, Kerry voters were more likely to participate in the exit polls than Bush voters."(37)

Now, thanks to careful examination of Mitofsky's own data by Freeman and a team of eight researchers, we can say conclusively that the theory is dead wrong. In fact it was *Democrats*, not Republicans, who were more disinclined to answer pollsters' questions on Election Day. In Bush strongholds, Freeman and the other researchers found that fifty-six percent of voters completed the exit survey -- compared to only fifty-three percent in Kerry strongholds.(38) "The data presented to support the claim not only fails to substantiate it," observes Freeman, "but actually contradicts it."

What's more, Freeman found, the greatest disparities between exit polls and the official vote count came in Republican strongholds. In precincts where Bush received at least eighty percent of the vote, the exit polls were off by an average of ten percent. By contrast, in precincts where Kerry dominated by eighty percent or more, the exit polls were accurate to within three tenths of one percent -- a pattern that suggests Republican election officials stuffed the ballot box in Bush country.(39)

"When you look at the numbers, there is a tremendous amount of data that supports the supposition of election fraud," concludes Freeman. "The discrepancies are higher in battleground states, higher where there were Republican governors, higher in states with greater proportions of African-American communities and higher in states where there were the most Election Day complaints. All these are strong indicators of fraud -- and yet this supposition has been utterly ignored by the press and, oddly, by the Democratic Party."

The evidence is especially strong in Ohio. In January, a team of mathematicians from the National Election Data Archive, a nonpartisan watchdog group, compared the state's exit polls against the certified vote count in each of the forty-nine precincts polled by Edison/Mitofsky. In twenty-two of those precincts -- nearly half of those polled -- they discovered results that differed widely from the official tally. Once again -- against all odds -- the widespread discrepancies were stacked massively in Bush's favor: In only two of the suspect twenty-two precincts did the disparity benefit Kerry. The wildest discrepancy came from the precinct Mitofsky numbered "27," in order to protect the anonymity of those surveyed. According to the exit poll, Kerry should have received sixty-seven percent of the vote in this precinct. Yet the certified tally gave him only thirty-eight percent. The statistical odds against such a variance are just shy of one in 3 billion.(40)

Such results, according to the archive, provide "virtually irrefutable evidence of vote miscount." The discrepancies, the experts add, "are consistent with the hypothesis that Kerry would have won Ohio's electoral votes if Ohio's official vote counts had accurately reflected voter intent."(41) According to Ron Baiman, vice president of the archive and a public policy analyst at Loyola University in Chicago, "No rigorous statistical explanation" can explain the "completely nonrandom" disparities that almost uniformly benefited Bush. The final results, he adds, are "completely consistent with election fraud -- specifically vote shifting."

II. The Partisan Official

No state was more important in the 2004 election than Ohio. The state has been key to every Republican presidential victory since Abraham Lincoln's, and both parties overwhelmed the state with television ads, field organizers and volunteers in an effort to register new voters and energize old ones. Bush and Kerry traveled to Ohio a total of forty-nine times during the campaign -- more than to any other state.(42)

But in the battle for Ohio, Republicans had a distinct advantage: The man in charge of the counting was Kenneth Blackwell, the co-chair of President Bush's re-election

committee.(43) As Ohio's secretary of state, Blackwell had broad powers to interpret and implement state and federal election laws -- setting standards for everything from the processing of voter registration to the conduct of official recounts.(44) And as Bush's re-election chair in Ohio, he had a powerful motivation to rig the rules for his candidate. Blackwell, in fact, served as the "principal electoral system adviser" for Bush during the 2000 recount in Florida,(45) where he witnessed firsthand the success of his counterpart Katherine Harris, the Florida secretary of state who co-chaired Bush's campaign there.(46)

Blackwell -- now the Republican candidate for governor of Ohio(47) -- is well-known in the state as a fierce partisan eager to rise in the GOP. An outspoken leader of Ohio's right-wing fundamentalists, he opposes abortion even in cases of rape(48) and was the chief cheerleader for the anti-gay-marriage amendment that Republicans employed to spark turnout in rural counties(49). He has openly denounced Kerry as "an unapologetic liberal Democrat,"(50) and during the 2004 election he used his official powers to disenfranchise hundreds of thousands of Ohio citizens in Democratic strongholds. In a ruling issued two weeks before the election, a federal judge rebuked Blackwell for seeking to "accomplish the same result in Ohio in 2004 that occurred in Florida in 2000."(51)

"The secretary of state is supposed to administer elections -- not throw them," says Rep. Dennis Kucinich, a Democrat from Cleveland who has dealt with Blackwell for years. "The election in Ohio in 2004 stands out as an example of how, under color of law, a state election official can frustrate the exercise of the right to vote."

The most extensive investigation of what happened in Ohio was conducted by Rep. John Conyers, the ranking Democrat on the House Judiciary Committee.(52) Frustrated by his party's failure to follow up on the widespread evidence of voter intimidation and fraud, Conyers and the committee's minority staff held public hearings in Ohio, where they looked into more than 50,000 complaints from voters.(53) In January 2005, Conyers issued a detailed report that outlined "massive and unprecedented voter irregularities and anomalies in Ohio." The problems, the report concludes, were "caused by intentional misconduct and illegal behavior, much of it involving Secretary of State J. Kenneth Blackwell."(54)

"Blackwell made Katherine Harris look like a cupcake," Conyers told me. "He saw his role as limiting the participation of Democratic voters. We had hearings in Columbus for two days. We could have stayed two weeks, the level of fury was so high. Thousands of people wanted to testify. Nothing like this had ever happened to them before."

When ROLLING STONE confronted Blackwell about his overtly partisan attempts to subvert the election, he dismissed any such claim as "silly on its face." Ohio, he insisted in a telephone interview, set a "gold standard" for electoral fairness. In fact, his campaign to subvert the will of the voters had begun long before Election Day. Instead of welcoming the avalanche of citizen involvement sparked by the campaign, Blackwell permitted election officials in Cleveland, Cincinnati and Toledo to conduct a massive

purge of their voter rolls, summarily expunging the names of more than 300,000 voters who had failed to cast ballots in the previous two national elections.(55) In Cleveland, which went five-to-one for Kerry, nearly one in four voters were wiped from the rolls between 2000 and 2004.(56)

There were legitimate reasons to clean up voting lists: Many of the names undoubtedly belonged to people who had moved or died. But thousands more were duly registered voters who were deprived of their constitutional right to vote -- often without any notification -- simply because they had decided not to go to the polls in prior elections.(57) In Cleveland's precinct 6C, where more than half the voters on the rolls were deleted,(58) turnout was only 7.1 percent(59) -- the lowest in the state.

According to the Conyers report, improper purging "likely disenfranchised tens of thousands of voters statewide."(60) If only one in ten of the 300,000 purged voters showed up on Election Day -- a conservative estimate, according to election scholars -- that is 30,000 citizens who were unfairly denied the opportunity to cast ballots.

III. The Strike Force

In the months leading up to the election, Ohio was in the midst of the biggest registration drive in its history. Tens of thousands of volunteers and paid political operatives from both parties canvassed the state, racing to register new voters in advance of the October 4th deadline. To those on the ground, it was clear that Democrats were outpacing their Republican counterparts: A *New York Times* analysis before the election found that new registrations in traditional Democratic strongholds were up 250 percent, compared to only twenty-five percent in Republican-leaning counties.(61) "The Democrats have been beating the pants off us in the air and on the ground," a GOP county official in Columbus confessed to *The Washington Times*.(62)

To stem the tide of new registrations, the Republican National Committee and the Ohio Republican Party attempted to knock tens of thousands of predominantly minority and urban voters off the rolls through illegal mailings known in electioneering jargon as "caging." During the Eighties, after the GOP used such mailings to disenfranchise nearly 76,000 black voters in New Jersey and Louisiana, it was forced to sign two separate court orders agreeing to abstain from caging.(63) But during the summer of 2004, the GOP targeted minority voters in Ohio by zip code, sending registered letters to more than 200,000 newly registered voters(64) in sixty-five counties.(65) On October 22nd, a mere eleven days before the election, Ohio Republican Party Chairman Bob Bennett -- who also chairs the board of elections in Cuyahoga County -- sought to invalidate the registrations of 35,427 voters who had refused to sign for the letters or whose mail came back as undeliverable.(66) Almost half of the challenged voters were from Democratic strongholds in and around Cleveland.(67)

There were plenty of valid reasons that voters had failed to respond to the mailings: The list included people who couldn't sign for the letters because they were serving in the U.S. military, college students whose school and home addresses differed,(68) and more

than 1,000 homeless people who had no permanent mailing address.(69) But the undeliverable mail, Bennett claimed, proved the new registrations were fraudulent.

By law, each voter was supposed to receive a hearing before being stricken from the rolls.(70) Instead, in the week before the election, kangaroo courts were rapidly set up across the state at Blackwell's direction that would inevitably disenfranchise thousands of voters at a time(71) -- a process that one Democratic election official in Toledo likened to an "inquisition."(72) Not that anyone was given a chance to actually show up and defend their right to vote: Notices to challenged voters were not only sent out impossibly late in the process, they were *mailed to the very addresses that the Republicans contended were faulty*.(73) Adding to the atmosphere of intimidation, sheriff's detectives in Sandusky County were dispatched to the homes of challenged voters to investigate the GOP's claims of fraud.(74)

"I'm afraid this is going to scare these people half to death, and they are never going to show up on Election Day," Barb Tuckerman, director of the Sandusky Board of Elections, told local reporters. "Many of them are young people who have registered for the first time. I've called some of these people, and they are perfectly legitimate."(75)

On October 27th, ruling that the effort likely violated both the "constitutional right to due process and constitutional right to vote," U.S. District Judge Susan Dlott put a halt to the GOP challenge(76) -- but not before tens of thousands of new voters received notices claiming they were improperly registered. Some election officials in the state illegally ignored Dlott's ruling, stripping hundreds of voters from the rolls.(77) In Columbus and elsewhere, challenged registrants were never notified that the court had cleared them to vote.

On October 29th, a federal judge found that the Republican Party had violated the court orders from the Eighties that barred it from caging. "The return of mail does not implicate fraud," the court affirmed,(78) and the disenfranchisement effort illegally targeted "precincts where minority voters predominate, interfering with and discouraging voters from voting in those districts."(79) Nor were such caging efforts limited to Ohio: The GOP also targeted hundreds of thousands of urban voters in the battleground states of Florida,(80) Pennsylvania(81) and Wisconsin.(82)

Republicans in Ohio also worked to deny the vote to citizens who had served jail time for felonies. Although rehabilitated prisoners are entitled to vote in Ohio, election officials in Cincinnati demanded that former convicts get a judge to sign off before they could register to vote.(83) In case they didn't get the message, Republican operatives turned to intimidation. According to the Conyers report, a team of twenty-five GOP volunteers calling themselves the Mighty Texas Strike Force holed up at the Holiday Inn in Columbus a day before the election, around the corner from the headquarters of the Ohio Republican Party -- which paid for their hotel rooms. The men were overheard by a hotel worker "using pay phones to make intimidating calls to likely voters" and threatening former convicts with jail time if they tried to cast ballots.(84)

This was no freelance operation. The Strike Force -- an offshoot of the Republican National Committee(85) -- was part of a team of more than 1,500 volunteers from Texas who were deployed to battleground states, usually in teams of ten. Their leader was Pat Oxford, (86) a Houston lawyer who managed Bush's legal defense team in 2000 in Florida,(87) where he warmly praised the efforts of a mob that stormed the Miami-Dade County election offices and halted the recount. It was later revealed that those involved in the "Brooks Brothers Riot" were not angry Floridians but paid GOP staffers, many of them flown in from out of state.(88) Photos of the protest show that one of the "rioters" was Joel Kaplan, who has just taken the place of Karl Rove at the White House, where he now directs the president's policy operations.(89)

IV. Barriers to Registration

To further monkey-wrench the process he was bound by law to safeguard, Blackwell cited an arcane elections regulation to make it harder to register new voters. In a now-infamous decree, Blackwell announced on September 7th -- less than a month before the filing deadline -- that election officials would process registration forms only if they were printed on eighty-pound unwaxed white paper stock, similar to a typical postcard. Justifying his decision to ROLLING STONE, Blackwell portrayed it as an attempt to protect voters: "The postal service had recommended to us that we establish a heavy enough paper-weight standard that we not disenfranchise voters by having their registration form damaged by postal equipment." Yet Blackwell's order also applied to registrations delivered in person to election offices. He further specified that any valid registration cards printed on lesser paper stock that miraculously survived the shredding gauntlet at the post office were not to be processed; instead, they were to be treated as applications for a registration form, requiring election boards to send out a brand-new card.(90)

Blackwell's directive clearly violated the Voting Rights Act, which stipulates that no one may be denied the right to vote because of a registration error that "is not material in determining whether such individual is qualified under state law to vote."(91) The decision immediately threw registration efforts into chaos. Local newspapers that had printed registration forms in their pages saw their efforts invalidated.(92) Delaware County posted a notice online saying it could no longer accept its own registration forms.(93) Even Blackwell couldn't follow the protocol: The Columbus Dispatch reported that his own staff distributed registration forms on lighter-weight paper that was illegal under his rule. Under the threat of court action, Blackwell ultimately revoked his order on September 28th -- six days before the registration deadline.(94)

But by then, the damage was done. Election boards across the state, already understaffed and backlogged with registration forms, were unable to process them all in time. According to a statistical analysis conducted in May by the nonpartisan Greater Cleveland Voter Coalition, 16,000 voters in and around the city were disenfranchised because of data-entry errors by election officials,(95) and another 15,000 lost the right to vote due to largely inconsequential omissions on their registration cards.(96) Statewide, the study concludes, a total of 72,000 voters were disenfranchised through avoidable

registration errors -- one percent of all voters in an election decided by barely two percent.(97)

Despite the widespread problems, Blackwell authorized only one investigation of registration errors after the election -- in Toledo -- but the report by his own inspectors offers a disturbing snapshot of the malfeasance and incompetence that plagued the entire state.(98) The top elections official in Toledo was a partisan in the Blackwell mold: Bernadette Noe, who chaired both the county board of elections and the county Republican Party.(99) The GOP post was previously held by her husband, Tom Noe,(100) who currently faces felony charges for embezzling state funds and illegally laundering $45,400 of his own money through intermediaries to the Bush campaign.(101)

State inspectors who investigated the elections operation in Toledo discovered "areas of grave concern."(102) With less than a month to go before the election, Bernadette Noe and her board had yet to process 20,000 voter registration cards.(103) Board officials arbitrarily decided that mail-in cards (mostly from the Republican suburbs) would be processed first, while registrations dropped off at the board's office (the fruit of intensive Democratic registration drives in the city) would be processed last.(104) When a grass-roots group called Project Vote delivered a batch of nearly 10,000 cards just before the October 4th deadline, an elections official casually remarked, "We may not get to them."(105) The same official then instructed employees to date-stamp an entire box containing thousands of forms, rather than marking each individual card, as required by law.(106) When the box was opened, officials had no way of confirming that the forms were filed prior to the deadline -- an error, state inspectors concluded, that could have disenfranchised "several thousand" voters from Democratic strongholds.(107)

The most troubling incident uncovered by the investigation was Noe's decision to allow Republican partisans behind the counter in the board of elections office to make photocopies of postcards sent to confirm voter registrations(108) -- records that could have been used in the GOP's caging efforts. On their second day in the office, the operatives were caught by an elections official tampering with the documents.(109) Investigators slammed the elections board for "a series of egregious blunders" that caused "the destruction, mutilation and damage of public records."(110)

On Election Day, Noe sent a team of Republican volunteers to the county warehouse where blank ballots were kept out in the open, "with no security measures in place."(111) The state's assistant director of elections, who just happened to be observing the ballot distribution, demanded they leave. The GOP operatives refused and ultimately had to be turned away by police.(112)

In April 2005, Noe and the entire Board of Elections were forced to resign. But once again, the damage was done. At a "Victory 2004" rally held in Toledo four days before the election, President Bush himself singled out a pair of "grass-roots" activists for special praise: "I want to thank my friends Bernadette Noe and Tom Noe for their leadership in Lucas County."(113)

V. "The Wrong Pew"

In one of his most effective maneuvers, Blackwell prevented thousands of voters from receiving provisional ballots on Election Day. The fail-safe ballots were mandated in 2002, when Congress passed a package of reforms called the Help America Vote Act. This would prevent a repeat of the most egregious injustice in the 2000 election, when officials in Florida barred thousands of lawfully registered minority voters from the polls because their names didn't appear on flawed precinct rolls. Under the law, would-be voters whose registration is questioned at the polls must be allowed to cast provisional ballots that can be counted after the election if the voter's registration proves valid.(114)

"Provisional ballots were supposed to be this great movement forward," says Tova Andrea Wang, an elections expert who served with ex-presidents Jimmy Carter and Gerald Ford on the commission that laid the groundwork for the Help America Vote Act. "But then different states erected barriers, and this new right became totally eviscerated."

In Ohio, Blackwell worked from the beginning to curtail the availability of provisional ballots. (The ballots are most often used to protect voters in heavily Democratic urban areas who move often, creating more opportunities for data-entry errors by election boards.) Six weeks before the vote, Blackwell illegally decreed that poll workers should make on-the-spot judgments as to whether or not a voter lived in the precinct, and provide provisional ballots only to those deemed eligible.(115) When the ruling was challenged in federal court, Judge James Carr could barely contain his anger. The very purpose of the Help America Vote Act, he ruled, was to make provisional ballots available to voters told by precinct workers that they were ineligible: "By not even mentioning this group -- the primary beneficiaries of HAVA's provisional-voting provisions -- Blackwell apparently seeks to accomplish the same result in Ohio in 2004 that occurred in Florida in 2000."(116)

But instead of complying with the judge's order to expand provisional balloting, Blackwell insisted that Carr was usurping his power as secretary of state and made a speech in which he compared himself to Mohandas Gandhi, Martin Luther King Jr. and the apostle Paul -- saying that he'd rather go to jail than follow federal law.(117) The Sixth Circuit Court of Appeals upheld Carr's ruling on October 23rd -- but the confusion over the issue still caused untold numbers of voters across the state to be illegally turned away at the polls on Election Day without being offered provisional ballots.(118) A federal judge also invalidated a decree by Blackwell that denied provisional ballots to absentee voters who were never sent their ballots in the mail. But that ruling did not come down until after 3 p.m. on the day of the election, and likely failed to filter down to the precinct level at all -- denying the franchise to even more eligible voters.(119)

We will never know for certain how many voters in Ohio were denied ballots by Blackwell's two illegal orders. But it is possible to put a fairly precise number on those turned away by his most disastrous directive. Traditionally, anyone in Ohio who reported to a polling station in their county could obtain a provisional ballot. But Blackwell decided to toss out the ballots of anyone who showed up at the wrong precinct -- a move

guaranteed to disenfranchise Democrats who live in urban areas crowded with multiple polling places. On October 14th, Judge Carr overruled the order, but Blackwell appealed.(120) In court, he was supported by his friend and campaign contributor Tom Noe, who joined the case as an intervenor on behalf of the secretary of state.(121) He also enjoyed the backing of Attorney General John Ashcroft, who filed an amicus brief in support of Blackwell's position -- marking the first time in American history that the Justice Department had gone to court to block the right of voters to vote.(122) The Sixth Circuit, stacked with four judges appointed by George W. Bush, sided with Blackwell.(123)

Blackwell insists that his decision kept the election clean. "If we had allowed this notion of ?voters without borders' to exist," he says, "it would have opened the door to massive fraud." But even Republicans were shocked by the move. DeForest Soaries, the GOP chairman of the Election Assistance Commission -- the federal agency set up to implement the Help America Vote Act -- upbraided Blackwell, saying that the commission disagreed with his decision to deny ballots to voters who showed up at the wrong precinct. "The purpose of provisional ballots is to not turn anyone away from the polls," Soaries explained. "We want as many votes to count as possible."(124)

The decision left hundreds of thousands of voters in predominantly Democratic counties to navigate the state's bewildering array of 11,366 precincts, whose boundaries had been redrawn just prior to the election.(125) To further compound their confusion, the new precinct lines were misidentified on the secretary of state's own Web site, which was months out of date on Election Day. Many voters, out of habit, reported to polling locations that were no longer theirs. Some were mistakenly assured by poll workers on the grounds that they were entitled to cast a provisional ballot at that precinct. Instead, thanks to Blackwell's ruling, at least 10,000 provisional votes were tossed out after Election Day simply because citizens wound up in the wrong line.(126)

In Toledo, Brandi and Brittany Stenson each got in a different line to vote in the gym at St. Elizabeth Seton School. Both of the sisters were registered to vote at the polling place on the city's north side, in the shadow of the giant DaimlerChrysler plant. Both cast ballots. But when the tallies were added up later, the family resemblance came to an abrupt end. Brittany's vote was counted -- but Brandi's wasn't. It wasn't enough that she had voted in the right building. If she wanted her vote to count, according to Blackwell's ruling, she had to choose the line that led to her assigned table. Her ballot -- along with those of her mother, her brother and thirty-seven other voters in the same precinct -- were thrown out(127) simply because they were, in the words of Rep. Stephanie Tubbs Jones (D-Ohio), "in the right church but the wrong pew."(128)

All told, the deliberate chaos that resulted from Blackwell's registration barriers did the trick. Black voters in the state -- who went overwhelmingly for Kerry -- were twenty percent more likely than whites to be forced to cast a provisional ballot.(129) In the end, nearly three percent of all voters in Ohio were forced to vote provisionally(130) -- and more than 35,000 of their ballots were ultimately rejected.(131)

VI. Long Lines

When Election Day dawned on November 2nd, tens of thousands of Ohio voters who had managed to overcome all the obstacles to registration erected by Blackwell discovered that it didn't matter whether they were properly listed on the voting rolls -- because long lines at their precincts prevented them from ever making it to the ballot box. Would-be voters in Dayton and Cincinnati routinely faced waits as long as three hours. Those in inner-city precincts in Columbus, Cleveland and Toledo -- which were voting for Kerry by margins of ninety percent or more -- often waited up to seven hours. At Kenyon College, students were forced to stand in line for eleven hours before being allowed to vote, with the last voters casting their ballots after three in the morning.(132)

A five-month analysis of the Ohio vote conducted by the Democratic National Committee concluded in June 2005 that three percent of all Ohio voters who showed up to vote on Election Day were forced to leave without casting a ballot.(133) That's more than 174,000 voters. "The vast majority of this lost vote," concluded the Conyers report, "was concentrated in urban, minority and Democratic-leaning areas."(134) Statewide, African-Americans waited an average of fifty-two minutes to vote, compared to only eighteen minutes for whites.(135)

The long lines were not only foreseeable -- they were actually created by GOP efforts. Republicans in the state legislature, citing new electronic voting machines that were supposed to speed voting, authorized local election boards to reduce the number of precincts across Ohio. In most cases, the new machines never materialized -- but that didn't stop officials in twenty of the state's eighty-eight counties, all of them favorable to Democrats, from slashing the number of precincts by at least twenty percent.(136)

Republican officials also created long lines by failing to distribute enough voting machines to inner-city precincts. After the Florida disaster in 2000, such problems with machines were supposed to be a thing of the past. Under the Help America Vote Act, Ohio received more than $30 million in federal funds to replace its faulty punch-card machines with more reliable systems.(137) But on Election Day, that money was sitting in the bank. Why? Because Ken Blackwell had applied for an extension until 2006, insisting that there was no point in buying electronic machines that would later have to be retrofitted under Ohio law to generate paper ballots.(138)

"No one has ever accused our secretary of state of lacking in ability," says Rep. Kucinich. "He's a rather bright fellow, and he's involved in the most minute details of his office. There's no doubt that he knew the effect of not having enough voting machines in some areas."

At liberal Kenyon College, where students had registered in record numbers, local election officials provided only two voting machines to handle the anticipated surge of up to 1,300 voters. Meanwhile, fundamentalist students at nearby Mount Vernon Nazarene University had one machine for 100 voters and faced no lines at all.(139) Citing the lines

at Kenyon, the Conyers report concluded that the "misallocation of machines went beyond urban/suburban discrepancies to specifically target Democratic areas."(140)

In Columbus, which had registered 125,000 new voters(141) -- more than half of them black(142) -- the board of elections estimated that it would need 5,000 machines to handle the huge surge.(143) "On Election Day, the county experienced an unprecedented turnout that could only be compared to a 500-year flood," says Matt Damschroder,(144) chairman of the Franklin County Board of Elections and the former head of the Republican Party in Columbus.(145) But instead of buying more equipment, the Conyers investigation found, Damschroder decided to "make do" with 2,741 machines.(146) And to make matters worse, he favored his own party in distributing the equipment. According to The Columbus Dispatch, precincts that had gone seventy percent or more for Al Gore in 2000 were allocated seventeen fewer machines in 2004, while strong GOP precincts received eight additional machines.(147) An analysis by voter advocates found that all but three of the thirty wards with the best voter-to-machine ratios were in Bush strongholds; all but one of the seven with the worst ratios were in Kerry country.(148)

The result was utterly predictable. According to an investigation by the Columbus Free Press, white Republican suburbanites, blessed with a surplus of machines, averaged waits of only twenty-two minutes; black urban Democrats averaged three hours and fifteen minutes.(149) "The allocation of voting machines in Franklin County was clearly biased against voters in precincts with high proportions of African-Americans," concluded Walter Mebane Jr., a government professor at Cornell University who conducted a statistical analysis of the vote in and around Columbus.(150)

By midmorning, when it became clear that voters were dropping out of line rather than braving the wait, precincts appealed for the right to distribute paper ballots to speed the process. Blackwell denied the request, saying it was an invitation to fraud.(151) A lawsuit ensued, and the handwritten affidavits submitted by voters and election officials offer a heart-rending snapshot of an electoral catastrophe in the offing:(152)

From Columbus Precinct 44D:

"There are three voting machines at this precinct. I have been informed that in prior elections there were normally four voting machines. At 1:45 p.m. there are approximately eighty-five voters in line. At this time, the line to vote is approximately three hours long. This precinct is largely African-American. I have personally witnessed voters leaving the polling place without voting due to the length of the line."

From Precinct 40:

"I am serving as a presiding judge, a position I have held for some 15+ years in precinct 40. In all my years of service, the lines are by far the longest I have seen, with some waiting as long as four to five hours. I expect the situation to only worsen as the early evening heavy turnout approaches. I have requested additional machines since 6:40 a.m. and no assistance has been offered."

Precinct 65H:

"I observed a broken voting machine that was not in use for approximately two hours. The precinct judge was very diligent but could not get through to the BOE."

Precinct 18A:

"At 4 p.m. the average wait time is about 4.5 hours and continuing to increase?. Voters are continuing to leave without voting."

As day stretched into evening, U.S. District Judge Algernon Marbley issued a temporary restraining order requiring that voters be offered paper ballots.(153) But it was too late: According to bipartisan estimates published in The Washington Post, as many as 15,000 voters in Columbus had already given up and gone home.(154) When closing time came at the polls, according to the Conyers report, some precinct workers illegally dismissed citizens who had waited for hours in the rain -- in direct violation of Ohio law, which stipulates that those in line at closing time are allowed to remain and vote.(155)

The voters disenfranchised by long lines were overwhelmingly Democrats. Because of the unequal distribution of voting equipment, the median turnout in Franklin County precincts won by Kerry was fifty-one percent, compared to sixty-one percent in those won by Bush. Assuming sixty percent turnout under more equitable conditions, Kerry would have gained an additional 17,000 votes in the county.(156)

In another move certain to add to the traffic jam at the polls, the GOP deployed 3,600 operatives on Election Day to challenge voters in thirty-one counties -- most of them in predominantly black and urban areas.(157) Although it was billed as a means to "ensure that voters are not disenfranchised by fraud,"(158) Republicans knew that the challengers would inevitably create delays for eligible voters. Even Mark Weaver, the GOP's attorney in Ohio, predicted in late October that the move would "create chaos, longer lines and frustration."(159)

The day before the election, Judge Dlott attempted to halt the challengers, ruling that "there exists an enormous risk of chaos, delay, intimidation and pandemonium inside the polls and in the lines out the doors." Dlott was also troubled by the placement of Republican challengers: In Hamilton County, fourteen percent of new voters in white areas would be confronted at the polls, compared to ninety-seven percent of new voters in black areas.(160) But when the case was appealed to the Supreme Court on Election Day, Justice John Paul Stevens allowed the challenges to go forward. "I have faith," he ruled, "that the elected officials and numerous election volunteers on the ground will carry out their responsibilities in a way that will enable qualified voters to cast their ballots."(161)

In fact, Blackwell gave Republican challengers unprecedented access to polling stations, where they intimidated voters, worsening delays in Democratic precincts. By the end of the day, thanks to a whirlwind of legal wrangling, the GOP had even gotten permission to use the discredited list of 35,000 names from its illegal caging effort to challenge would-

be voters.(162) According to the survey by the DNC, nearly 5,000 voters across the state were turned away at the polls because of registration challenges -- even though federal law required that they be provided with provisional ballots.(163)

VII. Faulty Machines

Voters who managed to make it past the array of hurdles erected by Republican officials found themselves confronted by voting machines that didn't work. Only 800,000 out of the 5.6 million votes in Ohio were cast on electronic voting machines, but they were plagued with errors.(164) In heavily Democratic areas around Youngstown, where nearly 100 voters reported entering "Kerry" on the touch screen and watching "Bush" light up, at least twenty machines had to be recalibrated in the middle of the voting process for chronically flipping Kerry votes to Bush.(165) (Similar "vote hopping" from Kerry to Bush was reported by voters and election officials in other states.)(166) Elsewhere, voters complained in sworn affidavits that they touched Kerry's name on the screen and it lit up, but that the light had gone out by the time they finished their ballot; the Kerry vote faded away.(167) In the state's most notorious incident, an electronic machine at a fundamentalist church in the town of Gahanna recorded a total of 4,258 votes for Bush and 260 votes for Kerry.(168) In that precinct, however, there were only 800 registered voters, of whom 638 showed up.(169) (The error, which was later blamed on a glitchy memory card, was corrected before the certified vote count.)

In addition to problems with electronic machines, Ohio's vote was skewed by old-fashioned punch-card equipment that posed what even Blackwell acknowledged was the risk of a "Florida-like calamity."(170) All but twenty of the state's counties relied on antiquated machines that were virtually guaranteed to destroy votes(171) -- many of which were counted by automatic tabulators manufactured by Triad Governmental Systems,(172) the same company that supplied Florida's notorious butterfly ballot in 2000. In fact, some 95,000 ballots in Ohio recorded no vote for president at all -- most of them on punch-card machines. Even accounting for the tiny fraction of voters in each election who decide not to cast votes for president -- generally in the range of half a percent, according to Ohio State law professor and respected elections scholar Dan Tokaji -- that would mean that at least 66,000 votes were invalidated by faulty voting equipment.(173) If counted by hand instead of by automated tabulator, the vast majority of these votes would have been discernable. But thanks to a corrupt recount process, only one county hand-counted its ballots.(174)

Most of the uncounted ballots occurred in Ohio's big cities. In Cleveland, where nearly 13,000 votes were ruined, a New York Times analysis found that black precincts suffered more than twice the rate of spoiled ballots than white districts.(175) In Dayton, Kerry-leaning precincts had nearly twice the number of spoiled ballots as Bush-leaning precincts.(176) Last April, a federal court ruled that Ohio's use of punch-card balloting violated the equal-protection rights of the citizens who voted on them.(177)

In addition to spoiling ballots, the punch-card machines also created bizarre miscounts known as "ballot crawl." In Cleveland Precinct 4F, a heavily African-American precinct, Constitution Party candidate Michael Peroutka was credited with an impressive forty-one percent of the vote. In Precinct 4N, where Al Gore won ninety-eight percent of the vote in 2000, Libertarian Party candidate Michael Badnarik was credited with thirty-three percent of the vote. Badnarik and Peroutka also picked up a sizable portion of the vote in precincts across Cleveland -- 11M, 3B, 8G, 8I, 3I.(178) "It appears that hundreds, if not thousands, of votes intended to be cast for Senator Kerry were recorded as being for a third-party candidate," the Conyers report concludes.(179)

But it's not just third-party candidates: Ballot crawl in Cleveland also shifted votes from Kerry to Bush. In Precinct 13B, where Bush received only six votes in 2000, he was credited with twenty percent of the total in 2004. Same story in 9P, where Bush recorded eighty-seven votes in 2004, compared to his grand total of one in 2000.(180)

VIII. Rural Counties

Despite the well-documented effort that prevented hundreds of thousands of voters in urban and minority precincts from casting ballots, the worst theft in Ohio may have quietly taken place in rural counties. An examination of election data suggests idespread fraud -- and even good old-fashioned stuffing of ballot boxes -- in twelve sparsely populated counties scattered across southern and western Ohio: Auglaize, Brown, Butler, Clermont, Darke, Highland, Mercer, Miami, Putnam, Shelby, Van Wert and Warren. (See The Twelve Suspect Counties) One key indicator of fraud is to look at counties where the presidential vote departs radically from other races on the ballot. By this measure, John Kerry's numbers were suspiciously low in each of the twelve counties -- and George Bush's were unusually high.

Take the case of Ellen Connally, a Democrat who lost her race for chief justice of the state Supreme Court. When the ballots were counted, Kerry should have drawn far more votes than Connally -- a liberal black judge who supports gay rights and campaigned on a shoestring budget. And that's exactly what happened statewide: Kerry tallied 667,000 more votes for president than Connally did for chief justice, outpolling her by a margin of thirty-two percent. Yet in these twelve off-the-radar counties, Connally somehow managed to outperform the best-funded Democrat in history, thumping Kerry by a grand total of 19,621 votes -- a margin of ten percent.(181) The Conyers report -- recognizing that thousands of rural Bush voters were unlikely to have backed a gay-friendly black judge roundly rejected in Democratic precincts -- suggests that "thousands of votes for Senator Kerry were lost."(182)

Kucinich, a veteran of elections in the state, puts it even more bluntly. "Down-ticket candidates shouldn't outperform presidential candidates like that," he says. "That just doesn't happen. The question is: Where did the votes for Kerry go?"

They certainly weren't invalidated by faulty voting equipment: a trifling one percent of presidential ballots in the twelve suspect counties were spoiled. The more likely explanation is that they were fraudulently shifted to Bush. Statewide, the president outpolled Thomas Moyer, the Republican judge who defeated Connally, by twenty-one percent. Yet in the twelve questionable counties, Bush's margin over Moyer was fifty percent -- a strong indication that the president's certified vote total was inflated. If Kerry had maintained his statewide margin over Connally in the twelve suspect counties, as he almost assuredly would have done in a clean election, he would have bested her by 81,260 ballots. That's a swing of 162,520 votes from Kerry to Bush -- more than enough to alter the outcome. (183)

"This is very strong evidence that the count is off in those counties," says Freeman, the poll analyst. "By itself, without anything else, what happened in these twelve counties turns Ohio into a Kerry state. To me, this provides every indication of fraud."

How might this fraud have been carried out? One way to steal votes is to tamper with individual ballots -- and there is evidence that Republicans did just that. In Clermont County, where optical scanners were used to tabulate votes, sworn affidavits by election observers given to the House Judiciary Committee describe ballots on which marks for Kerry were covered up with white stickers, while marks for Bush were filled in to replace them. Rep. Conyers, in a letter to the FBI, described the testimony as "strong evidence of vote tampering if not outright fraud." (184) In Miami County, where Connally outpaced Kerry, one precinct registered a turnout of 98.55 percent (185) -- meaning that all but ten eligible voters went to the polls on Election Day. An investigation by the Columbus Free Press, however, collected affidavits from twenty-five people who swear they didn't vote. (186)

In addition to altering individual ballots, evidence suggests that Republicans tampered with the software used to tabulate votes. In Auglaize County, where Kerry lost not only to Connally but to two other defeated Democratic judicial candidates, voters cast their ballots on touch-screen machines. (187) Two weeks before the election, an employee of ES&S, the company that manufactures the machines, was observed by a local election official making an unauthorized log-in to the central computer used to compile election results. (188) In Miami County, after 100 percent of precincts had already reported their official results, an additional 18,615 votes were inexplicably added to the final tally. The last-minute alteration awarded 12,000 of the votes to Bush, boosting his margin of victory in the county by nearly 6,000. (189)

The most transparently crooked incident took place in Warren County. In the leadup to the election, Blackwell had illegally sought to keep reporters and election observers at least 100 feet away from the polls. (190) The Sixth Circuit, ruling that the decree represented an unconstitutional violation of the First Amendment, noted ominously that "democracies die behind closed doors." But the decision didn't stop officials in Warren County from devising a way to count the vote in secret. Immediately after the polls closed on Election Day, GOP officials -- citing the FBI -- declared that the county was facing a terrorist threat that ranked ten on a scale of one to ten. The county administration

building was hastily locked down, allowing election officials to tabulate the results without any reporters present.

In fact, there was no terrorist threat. The FBI declared that it had issued no such warning, and an investigation by The Cincinnati Enquirer unearthed e-mails showing that the Republican plan to declare a terrorist alert had been in the works for eight days prior to the election. Officials had even refined the plot down to the language they used on signs notifying the public of a lockdown. (When ROLLING STONE requested copies of the same e-mails from the county, officials responded that the documents have been destroyed.) (191)

The late-night secrecy in Warren County recalls a classic trick: Results are held back until it's determined how many votes the favored candidate needs to win, and the totals are then adjusted accordingly. When Warren County finally announced its official results -- one of the last counties in the state to do so (192) -- the results departed wildly from statewide patterns. John Kerry received 2,426 fewer votes for president than Ellen Connally, the poorly funded black judge, did for chief justice. (193) As the Conyers report concluded, "It is impossible to rule out the possibility that some sort of manipulation of the tallies occurred on election night in the locked-down facility." (194)

Nor does the electoral tampering appear to have been isolated to these dozen counties. Ohio, like several other states, had an initiative on the ballot in 2004 to outlaw gay marriage. Statewide, the measure proved far more popular than Bush, besting the president by 470,000 votes. But in six of the twelve suspect counties -- as well as in six other small counties in central Ohio -- Bush outpolled the ban on same-sex unions by 16,132 votes. To trust the official tally, in other words, you must believe that thousands of rural Ohioans voted for both President Bush and gay marriage. (195)

IX. Rigging the Recount

After Kerry conceded the election, his campaign helped the Libertarian and Green parties pay for a recount of all eighty-eight counties in Ohio. Under state law, county boards of election were required to randomly select three percent of their precincts and recount the ballots both by hand and by machine. If the two totals reconciled exactly, a costly hand recount of the remaining votes could be avoided; machines could be used to tally the rest.

But election officials in Ohio worked outside the law to avoid hand recounts. According to charges brought by a special prosecutor in April, election officials in Cleveland fraudulently and secretly pre-counted precincts by hand to identify ones that would match the machine count. They then used these pre-screened precincts to select the "random" sample of three percent used for the recount.

"If it didn't balance, they excluded those precincts," said the prosecutor, Kevin Baxter, who has filed felony indictments against three election workers in Cleveland. "They screwed with the process and increased the probability, if not the certainty, that there would not be a full, countywide hand count." (196)

Voting machines were also tinkered with prior to the recount. In Hocking County, deputy elections director Sherole Eaton caught an employee of Triad -- which provided the software used to count punch-card ballots in nearly half of Ohio's counties (197) -- making unauthorized modifications to the tabulating computer before the recount. Eaton told the Conyers committee that the same employee also provided county officials with a "cheat sheet" so that "the count would come out perfect and we wouldn't have to do a full hand-recount of the county." (198) After Eaton blew the whistle on the illegal tampering, she was fired.

(199) The same Triad employee was dispatched to do the same work in at least five other counties. (200) Company president Tod Rapp -- who contributed to Bush's campaign (201) -- has confirmed that Triad routinely makes such tabulator adjustments to help election officials avoid hand recounts. In the end, every county serviced by Triad failed to conduct full recounts by hand. (202)

Even more troubling, in at least two counties, Fulton and Henry, Triad was able to connect to tabulating computers remotely via a dial-up connection, and reprogram them to recount only the presidential ballots. (203) If that kind of remote tabulator modification is possible for the purposes of the recount, it's no great leap to wonder if such modifications might have helped skew the original vote count. But the window for settling such questions is closing rapidly: On November 2nd of this year, on the second anniversary of the election, state officials will be permitted under Ohio law to shred all ballots from the 2004 election. (204)

X. What's At Stake

The mounting evidence that Republicans employed broad, methodical and illegal tactics in the 2004 election should raise serious alarms among news organizations. But instead of investigating allegations of wrongdoing, the press has simply accepted the result as valid. "We're in a terrible fix," Rep. Conyers told me. "We've got a media that uses its bullhorn in reverse -- to turn down the volume on this outrage rather than turning it up. That's why our citizens are not up in arms."

The lone news anchor who seriously questioned the integrity of the 2004 election was Keith Olbermann of MSNBC. I asked him why he stood against the tide. "I was a sports reporter, so I was used to dealing with numbers," he said. "And the numbers made no sense. Kerry had an insurmountable lead in the exit polls on Election Night -- and then everything flipped." Olbermann believes that his journalistic colleagues fell down on the job. "I was stunned by the lack of interest by investigative reporters," he said. "The Republicans shut down Warren County, allegedly for national security purposes -- and no one covered it. Shouldn't someone have sent a camera and a few reporters out there?"

Olbermann attributes the lack of coverage to self-censorship by journalists. "You can rock the boat, but you can never say that the entire ocean is in trouble," he said. "You cannot say: By the way, there's something wrong with our electoral system."

Federal officials charged with safeguarding the vote have also failed to contest the election. "Congress hasn't investigated this at all," says Kucinich. "There has been no oversight over our nation's most basic right: the right to vote. How can we call ourselves a beacon of democracy abroad when the right to vote hasn't been secured in free and fair elections at home?"

Sen. John Kerry -- in a wide-ranging discussion of ROLLING STONE's investigation -- expressed concern about Republican tactics in 2004, but stopped short of saying the election was stolen. "Can I draw a conclusion that they played tough games and clearly had an intent to reduce the level of our vote? Yes, absolutely. Can I tell you to a certainty that it made the difference in the election? I can't. There's no way for me to do that. If I could have done that, then obviously I would have found some legal recourse."

Kerry conceded, however, that the widespread irregularities make it impossible to know for certain that the outcome reflected the will of the voters. "I think there are clearly states where it is questionable whether everybody's vote is being counted, whether everybody is being given the opportunity to register and to vote," he said. "There are clearly barriers in too many places to the ability of people to exercise their full franchise. For that to be happening in the United States of America today is disgraceful."

Kerry's comments were echoed by Howard Dean, the chairman of the Democratic National Committee. "I'm not confident that the election in Ohio was fairly decided," Dean says. "We know that there was substantial voter suppression, and the machines were not reliable. It should not be a surprise that the Republicans are willing to do things that are unethical to manipulate elections. That's what we suspect has happened, and we'd like to safeguard our elections so that democracy can still be counted on to work."

To help prevent a repeat of 2004, Kerry has co-sponsored a package of election reforms called the Count Every Vote Act. The measure would increase turnout by allowing voters to register at the polls on Election Day, provide provisional ballots to voters who inadvertently show up at the wrong precinct, require electronic voting machines to produce paper receipts verified by voters, and force election officials like Blackwell to step down if they want to join a campaign. (205) But Kerry says his fellow Democrats have been reluctant to push the reforms, fearing that Republicans would use their majority in Congress to create even more obstacles to voting. "The real reason there is no appetite up here is that people are afraid the Republicans will amend HAVA and shove something far worse down our throats," he told me.

On May 24th, Sen. Mitch McConnell (R-Ky.) tried unsuccessfully to amend the immigration bill to bar anyone who lacks a government-issued photo ID from voting (206) -- a rule that would disenfranchise at least six percent of Americans, the majority of them urban and poor, who lack such identification. (207) The GOP-controlled state legislature in Indiana passed a similar measure, and an ID rule in Georgia was recently struck down as unconstitutional. (208)

"Why erect those kinds of hurdles unless you're afraid of voters?" asks Ralph Neas, director of People for the American Way. "The country will be better off if everyone votes -- Democrats and Republicans. But that is not the Blackwell philosophy, that is not the George W. Bush or Jeb Bush philosophy. They want to limit the franchise and go to extraordinary lengths to make it more difficult to vote."

The issue of what happened in 2004 is not an academic one. For the second election in a row, the president of the United States was selected not by the uncontested will of the people but under a cloud of dirty tricks. Given the scope of the GOP machinations, we simply cannot be certain that the right man now occupies the Oval Office -- which means, in effect, that we have been deprived of our faith in democracy itself.

American history is littered with vote fraud -- but rather than learning from our shameful past and cleaning up the system, we have allowed the problem to grow even worse. If the last two elections have taught us anything, it is this: The single greatest threat to our democracy is the insecurity of our voting system. If people lose faith that their votes are accurately and faithfully recorded, they will abandon the ballot box. Nothing less is at stake here than the entire idea of a government by the people.

Voting, as Thomas Paine said, "is the right upon which all other rights depend." Unless we ensure that right, everything else we hold dear is in jeopardy.

Talk about it in our National Affairs blog, or see exclusive documents, sources, charts and commentary.

--

1) Manual Roig-Franzia and Dan Keating, "Latest Conspiracy Theory -- Kerry Won -- Hits the Ether," *The Washington Post*, November 11, 2004.

2) The New York Times Editorial Desk, "About Those Election Results," *The New York Times*, November 14, 2004.

3) United States Department of Defense, August 6, 2004.

4) Overseas Vote Foundation, "2004 Post Election Survey Results," June 2005, page 11.

5) Jennifer Joan Lee, "Pentagon Blocks Site for Voters Outside U.S.," *International Herald Tribune*, September 20, 2004.

6) Meg Landers, "Librarian Bares Possible Voter Registration Dodge," *Mail Tribune* (Jackson County, OR), September 21, 2004.

7) Mark Brunswick and Pat Doyle, "Voter Registration; 3 former workers: Firm paid pro-Bush bonuses; One said he was told his job was to bring back cards for GOP voters," *Star Tribune* (Minneapolis, MN), October 27, 2004.

8) Federal Election Commission, Federal Elections 2004: Election Results for the U.S. President.

9) Ellen Theisen and Warren Stewart, Summary Report on New Mexico State Election Data, January 4, 2005, pg. 2

James W. Bronsan, "In 2004, New Mexico Worst at Counting Votes," Scripps Howard News Service, December 22, 2004. 10) "A Summary of the 2004 Election Day Survey; How We Voted: People, Ballots & Polling Places; A Report to the American People by the United States Election Assistance Commission", September 2005, pg. 10.

11) Facts mentioned in this paragraph are subsequently cited throughout the story.

12) See "Ohio's Missing Votes"

13) Federal Election Commission, Federal Elections 2004: Election Results for the U.S. President.

14) Democratic National Committee, Voting Rights Institute, "Democracy at Risk: The 2004 Election in Ohio", June 22, 2005. Page 5

15) See "VIII. Rural Counties."

16) Evaluation of Edison/Mitofsky Election System 2004" prepared by Edison Media Research and Mitofksy International for the National Election Pool (NEP), January 19, 2005, Page 3

17) This refers to data for German national elections in 1994, 1998 and 2002, previously cited by Steven F. Freeman.

18) Dick Morris, "Those Faulty Exit Polls Were Sabotage," *The Hill*, November 4, 2004.

19) Martin Plissner, "Exit Polls to Protect the Vote," *The New York Times*, October 17, 2004.

20) Matt Kelley, "U.S. Money has Helped Opposition in Ukraine," Associated Press, December 11, 2004.

Daniel Williams, "Court Rejects Ukraine Vote; Justices Cite Massive Fraud in Runoff, Set New Election," *The Washington Post*, December 4, 2004.

21) Steve Freeman and Joel Bleifuss, "Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count," *Seven Stories Press*, July 2006, Page 102.

22) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 3.

23) Mitofsky International

24) Tim Golden, "Election Near, Mexicans Question the Questioners," *The New York Times*, August 10, 1994.

25) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 59.

26) Jonathan D. Simon, J.D., and Ron P. Baiman, Ph.D., "The 2004 Presidential Election: Who Won the Popular Vote? An Examination of the Comparative Validity of Exit Poll and Vote Count Data." FreePress.org, December 29, 2004, P. 9

27) Analysis by Steven F. Freeman.

28) Freeman and Bleifuss, pg. 134

29) Jim Rutenberg, "Report Says Problems Led to Skewing Survey Data," *The New York Times*, November 5, 2004.

30) Freeman and Bleifuss, pg. 134

31) Analysis of the 2004 Presidential Election Exit Poll Discrepancies. U.S. Count Votes. Baiman R, et al. March 31, 2005. Page 3.

32) Notes From Campaign Trail, Fox News Network, Live Event, 8:00 p.m. EST, November 2, 2004.

33) Freeman and Bleifuss, pg. 101-102

34) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 4.

35) Freeman and Bleifuss, pg. 120.

36) Interview with John Zogby

37) Evaluation of Edison/Mitofsky Election System 2004; prepared by Edison Media Research and Mitofsky International for the National Election Pool (NEP), January 19, 2005, Page 4.

38) Freeman and Bleifuss, pg. 128.

39) Freeman and Bleifuss, pg. 130.

40) "The Gun is Smoking: 2004 Ohio Precinct-level Exit Poll Data Show Virtually Irrefutable Evidence of Vote Miscount," U.S. Count Votes, National Election Data Archive, January 23, 2006.

41) "The Gun is Smoking," pg. 16.

42) *The Washington Post*, "Charting the Campaign: Top Five Most Visited States," November 2, 2004.

43) John McCarthy, "Nearly a Month Later, Ohio Fight Goes On," Associated Press Online, November 30, 2004.

44) Ohio Revised Code, 3501.04, Chief Election Officer"

45) Joe Hallett, "Blackwell Joins GOP's Spin Team," *The Columbus Dispatch*, November 30, 2004.

46) Gary Fineout, "Records Indicate Harris on Defense," *Ledger* (Lakeland, Florida), November 18, 2000.

47) http://www.kenblackwell.com/

48) Joe Hallett, "Governor; Aggressive First Round Culminates Tuesday," *Columbus Dispatch*, April 30, 2006.

49) Sandy Theis, "Blackwell Accused of Breaking Law by Pushing Same-Sex Marriage Ban," *Plain Dealer* (Cleveland, OH), October 29, 2004.

50) Raw Story, "Republican Ohio Secretary of State Boasts About Delivering Ohio to Bush."

51) In the United States District Court For the Northern District of Ohio Northern Division, The Sandusky County Democratic Party et al. v. J. Kenneth Blackwell, Case No. 3:04CV7582, Page 8.

52) Preserving Democracy: What Went Wrong in Ohio, Status Report of the House Judiciary Committee Democratic Staff (Rep. John Conyers, Jr.), January 5, 2005.

53) Preserving Democracy, pg. 8.

54) Preserving Democracy, pg. 4.

55) The board of elections in Cuyahoga, Franklin and Hamilton counties.

56) Analysis by Richard Hayes Phillips, a voting rights advocate.

57) Fritz Wenzel, "Purging of Rolls, Confusion Anger Voters; 41% of Nov. 2 Provisional Ballots Axed in Lucas County," *Toledo Blade*, January 9, 2005.

58) Analysis by Hayes Phillips.

59) Cuyahoga County Board of Elections

60) Preserving Democracy, pg. 6.

61) Ford Fessenden, "A Big Increase of New Voters in Swing States," *The New York Times*, September 26, 2004.

62) Ralph Z. Hallow, "Republicans Go 'Under the Radar' in Rural Ohio," *The Washington Times*, October 28, 2004.

63) Jo Becker, "GOP Challenging Voter Registrations," *The Washington Post*, October 29, 2004.

64) Janet Babin, "Voter Registrations Challenged in Ohio," NPR, All Things Considered, October 28, 2004.

65) In the United States District Court for the Southern District of Ohio, Western Division, Amy Miller et al. v. J. Kenneth Blackwell, Case no. C-1-04-735, Page 2.

66) Sandy Theis, "Fraud-Busters Busted; GOP's Blanket Challenge Backfires in a Big Way," *Plain Dealer*, October 31, 2004.

67) Daniel Tokaji, "Early Returns on Election Reform," *George Washington Law Review*, Vol. 74, 2005, page 1235

68) Sandy Theis, "Fraud-Busters Busted; GOP's Blanket Challenge Backfires in a Big Way," *Plain Dealer*, October 31, 2004.

69) Andrew Welsh-Huggins, "Out of Country, Off Beaten Path; Reason for Voting Challenges Vary," *Plain Dealer* (Cleveland, OH), October 27, 2004.

70) Ohio Revised Code; 3505.19

71) Directive No. 2004-44 from J. Kenneth Blackwell, Ohio Sec'y of State, to All County Boards of Elections Members, Directors, and Deputy Directors 1 (Oct. 26, 2004).

72) Fritz Wenzel, "Challenges Filed Against 931 Lucas County Voters," *Toledo Blade*, October 27, 2004.

73) In the United States District Court for the Southern District of Ohio, Western Division, Amy Miller et al. v. J. Kenneth Blackwell, Case no. C-1-04-735, Page 4.

74) LaRaye Brown, "Elections Board Plans Hearing For Challenges," *The News Messenger*, October 26, 2004.

75) LaRaye Brown, "Elections Board Plans Hearing For Challenges," The News Messenger, October 26, 2004.

76) Miller v. Blackwell, (S.D. Ohio), (6th Cir. 2004)

77) James Drew and Steve Eder, "Court Rejects GOP Voter Challenge; Some Counties Hold Hearings Anyhow; 200 Voters Turned Away," Toledo Blade, October 30, 2004.

78) United States Court of Appeals for the Third Circuit, Republican National Committee v. Democratic National Committee, No. 04-4186

79) United States Court of Appeals for the Third Circuit, Republican National Committee v. Democratic National Committee, No. 04-4186

80) Kate Zernike and William Yardley, "Charges of Dirty Tricks, Fraud and Voter Suppression Already Flying in Several States," The New York Times, November 1, 2004.

Greg Palast, "New Florida Vote Scandal Feared," BBC News, October 26, 2004.

81) Kate Zernike and William Yardley, "Charges of Dirty Tricks, Fraud and Voter Suppression Already Flying in Several States," The New York Times, November 1, 2004.

82) Greg J. Borowski, "GOP Demands IDs of 37,000 in City," Milwaukee Journal Sentinel, October 30, 2004.

83) "The Disenfranchisement of the Re-Enfranchised; How Confusion Over Felon Voter Eligibility in Ohio Keeps Qualified Ex-Offender Voters From the Polls," Prison Reform Advocacy Center, Cincinnati, Ohio, August 2004.

84) Preserving Democracy, 64.

Note: Additional reporting contributed to this paragraph.

85) Gardner Selby, "Hundreds of Texans Ride Bandwagons Around U.S.; Volunteers Say Election is Too Important Not to Hit the Campaign Trail," San Antonio Express-News (Texas), October 15, 2004.

86) "Down to the Wire," Newsweek, November 15, 2004.

87) Lynda Gorov and Anne E. Kornblut, "Gore to Challenge Results; No Plans to Concede; top Fla. Court refuses to order resumption of Miami-Dade County," The Boston Globe, November 24, 2000.

88) Al Kamen, "Miami 'Riot' Squad: Where are they Now?" Washington Post, January 24, 2005.

89) Al Kamen, "Walking the Talk," Washington Post, April 21, 2006.

90) Secretary of State Directive, No. 2004-31, Section II, September 7, 2004.

91) Tokaji, pg. 1227 and Voting Rights Act, 42 U.S.C. 1971(a)(2)(B) (2000).

92) Jim Bebbington and Laura Bischoff, "Blackwell Rulings Rile Voting Advocates," Dayton Daily News.

93) Congress of the United States House of Representatives, Committee on the Judiciary, letter from Conyers to Blackwell

94) Catherine Candisky, "Secretary of State Lifts Order on Voting Forms; Lighter Paper Now Deemed Acceptable for Registration," Columbus Dispatch, September 30, 2004.

95) Analyses of Voter Disqualification, Cuyahoga County, Ohio, November 2004, Greater Cleveland Voter Registration Coalition, updated May 9, 2006, page 14.

96) Analyses of Voter Disqualification, page 5.

97) Analyses of Voter Disqualification, page. 1.

98) Lucas County Board of Elections -- Results of Investigation Following November 2004 General Election, April 5, 2005, Richard Weghorst and Faith Lyon.

99) "Feds Confirm Investigation of GOP Campaign Contributor," The Associated Press State & Local Wire, April 28, 2005.

100) Mark Naymik, "Coin Dealer Raised Chunk of Change for Bush," Plain Dealer, August 7, 2005.

101) Christopher D. Kirkpatrick, "Noe Indicted for Laundering Money to Bush Campaign," Toledo Blade, October 27, 2005

Mike Wilkinson and James Drew, "Grand Jury Charges Noe with 53 Felony Counts," Toledo Blade, February 13, 2006

102) Lucas County Report, pg. 2.

103) Lucas County Report, pg. 9.

104) Lucas County Report, pg. 10.

105) Lucas County Report, pages 9-10.

106) Lucas County Report, pg. 9.

107) Lucas County Report, pg. 9.

108) Lucas County Report, pg. 18.

109) Lucas County Report, pages 18-19.

110) Lucas County Report, pg. 19.

111) Lucas County Report, pages 4, 6.

112) Lucas County Report, pg. 6.

113) "Remarks by the President at Victory 2004 Rally," Seagate Convention Centre, Toledo, Ohio, October 29, 2004, The White House.

note: Bernadette and Tom Noe's last name is incorrectly spelled "Noy" in the official White House transcript.

114) Help America Vote Act, Title III, Uniform and Nondiscriminatory Election Technology and Administration Requirements, Subtitle A Requirements, Section 302.

115) Directive No. 2004-33 from J. Kenneth Blackwell, Ohio Sec'y of State, to All County Boards of Elections 1 (Sept. 16, 2004.).

116) In the United States District Court for the Northern District of Ohio, Western Division, The Sandusky County Democratic Party v. J. Kenneth Blackwell, Case No. 3:04CV7582, Page 8.

117) Gregory Korte and Jim Siegel, "Defiant Blackwell Rips Judge; Secretary Says He'd go to Jail Before Rewriting Ballot Memo," Cincinnati Enquirer, October 22, 2004.

118) Sandusky County Democratic Party v. Blackwell, (N.D. Ohio), (6th Cir. 2004). And

Tokaji, pg. 1229

119) Tokaji, pg. 1231

120) "Judge, Blackwell, Spar Over Provisional Ballots," The Associated Press, October 20, 2004.

121) In the United States District Court for the Northern District of Ohio Western Division, The League of Women Voters of Ohio, et al. v. J. Kenneth Blackwell, Case No. 3:04 CV 7622

122) David G. Savage, Richard B. Schmitt, "Bush Seeks Limit to Suits Over Voting Rights," Los Angeles Times, October 29, 2004.

123) Judge Julia Smith Gibbons August 2, 2002

Judge John M. Rogers November 27, 2002

Judge Jeffrey S. Sutton May 5, 2003

Judge Deborah L. Cook May 7, 2003

124) Darrell Rowland and Lee Leonard, "Federal Agency Distances Itself from Ohio Official; Blackwell Says Their Provisional-Balloting Positions are the Same," Columbus Dispatch (Ohio), October 20, 2004.

125) David S. Bernstein, "Questioning Ohio,"

Providence Phoenix, November 12-18, 2004.

126) Norma Robbins, "Facts to Ponder About the 2004 General Election," May 10, 2006.

127) Fritz Wenzel, "Purging of Rolls, Confusion Anger Voters; 41% of November 2nd Provisional Ballots Axed in Lucas County," Toledo Blade, January 9, 2005.

128) Interview with Stephanie Tubbs Jones

129) Democratic National Committee, Voting Rights Institute, "Democracy at Risk: The 2004 Election in Ohio," June 22, 2005. Page 6.

130) Democracy at Risk, pg. 5.

131) Ohio Secretary of State Web site, Provisional Ballots; Official Tabulation, November 2, 2004.

132) Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio," Washington Post, December 15, 2004.

Christopher Hitchens, "Ohio's Odd Numbers," Vanity Fair.

Additional analysis by Bob Fitrakis, editor of the Columbus Free Press, and Richard Hayes Phillips.

133) Democracy at Risk, pg. 3.

134) Preserving Democracy, pg. 29.

135) Democracy at Risk, pg. 5.

136) Bernstein, Providence Phoenix

137) U.S. Election Assistance Comm'n, Funding for States,

and Tokaji, pg. 1222.

138) "The Battle Over Voting Technology," PBS, Online NewsHour, December 16, 2003.

Paul Festa, "States Scrutinize e-Voting as Primaries Near," CNET News.com, December 8, 2003.

139) Preserving Democracy, pg. 27.

140) Preserving Democracy, pg. 30.

141) Matt Damschroder, chairman of Franklin County Board of Elections. 142) Preserving Democracy, pg. 26. 143) Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio," Washington Post, December 15, 2004.

144) Correspondence with Matt Damschroder.

145) Suzanne Hoholik and Mark Ferenchik, "GOP Council Hopes Rising; Party expects ruling on petitions will put its candidate on ballot," Columbus Dispatch, March 26, 2003.

146) Preserving Democracy, pg. 25.

147) Mark Niquette, "GOP Strongholds Saw Increase in Voting Machines," Columbus Dispatch, December 12, 2004.

148) Michael Powell and Peter Slevin, "Several Factors Contributed to 'Lost' Voters in Ohio," Washington Post, December 15, 2004.

149) Columbus Free Press editor, Bob Fitrakis.

150) "Voting Machine Allocation in Franklin County, Ohio, 2004: Response to the U.S. Department of Justice Letter of June 29, 2005," Walter R. Mebane, Jr., February 11, 2006, Page 13.

151) Tokaji, pg. 1238.

Ohio Democratic Party v. Blackwell, No. C2 04 1055, (S.D. Ohio Nov. 2, 2004).

152) Ohio Democratic Party v. Blackwell, No. C2 04 1055, (S.D. Ohio Nov. 2, 2004).

153) Ohio Democratic Party v. Blackwell, No. C2 04 1055, slip op. At 1 (S.D. Ohio Nov. 2, 2004).

154) Washington Post, "Several Factors Contributed to 'Lost' Voters in Ohio," Michael Powell and Peter Slevin, December 15, 2004.

155) Preserving Democracy, pg. 25.

156) Affidavit of Richard Hayes Phillips, December 10, 2004.

157) Mark Niquette, "Finally, It's Time to Vote; U.S. Appeals Court Overturns Ban, Allows Challengers Back in Polling Sites," Columbus Dispatch (Ohio), November 2, 2004.

158) In the United States District Court for the Southern District of Ohio, Western Division, Marian A. Spencer, et. al., v. J. Kenneth Blackwell, Case no. C-1-04-738, page 3.

159) James Dao, "The 2004 Campaign: Ohio, G.O.P. Bid to Contest Registrations is Blocked," The New York Times, October 28, 2004.

160) Marian A. Spencer, et. al., v. J. Kenneth Blackwell; In the United States District Court for the Southern District of Ohio, Western Division; Case no. C-1-04-738.

161) Dan Horn, Howard Wilkinson, and Cindi Andrews, "Supreme Court Justice Allows Challengers," Cincinnati Enquirer.

162) Tokaji, pages 1237-1238.

163) Democracy at Risk, pg. 20.

164) The Columbus Free Press.

165) "Errors Plague Voting Process in Ohio, Pa." The Vindicator, November 3, 2004, Vindicator Staff Report

166) Voters Unite catalogues news reports from around the country that give examples of dysfunctional voting machines, among other election stories.

167) The Columbus Free Press.

168) Jim Woods, "In One Precinct, Bush's Tally was Supersized by a Computer Glitch," Columbus Dispatch (Ohio), November 5, 2004.

169) Hitchens, Vanity Fair.

170) Letter from J. Kenneth Blackwell, Ohio Secretary of State, to Doug White, President, Ohio Senate 3 (Feb. 26, 2004).

171) Sixty-eight counties used punch card ballots. Thirteen used optical scan machines. Seven used touch-screen technology.

172) Malia Rulon, "Congressman Calls For FBI Investigation Into Ohio Election," The Associated Press State & Local Wire, December 15, 2004.

173) Tokaji, Page 1221.

174) Jim Konkoly, "Volunteers Complete Local Recount," Coshocton Tribune, December 18, 2004.

175) New York Times, "Voting Problems in Ohio Spur Call for Overhaul," James Dao, Ford Fessenden, December 24, 2004.

176) Ken McCall and Jim Bebbington, "Two Precincts had High Undercounts, Analysis Shows,"Dayton Daily News, November 18, 2004.

177) Lisa A. Abraham, "Punch-Card Voting is Illegal," Akron Beacon Journal, April 22, 2006.

178) Analysis by Hayes Phillips.

179) Preserving Democracy, pg. 57.

180) Analysis by Hayes Phillips.

181) Analysis completed by using official tallies on the Ohio Secretary of State Web site.

Official tallies for Kerry

Official tallies for Connally

182) Preserving Democracy, pg. 55.

183) Analysis conducted through official vote tallies posted on Ohio Secretary of State Web site:

Tally 1

Tally 2

184) Letter from Rep. John Conyers to Chris Swecker, assistant director of the Criminal Investigative Division at the Federal Bureau of Investigation. See attached affidavits.

185) Miami County Board of Elections.

186) Confirmed by Bob Fitrakis of the Free Press

187) Analysis conducted through official vote tallies posted on Ohio Secretary of State Web site.

188) Erin Miller, "Board Awaits State Follow Up," The Evening Leader.

189) "Preserving Democracy," pages 58-59.

190) The Associated Press, "News Groups Sue Ohio Elections Chief Over Poll Access," Associated Press, November 2, 2004.

And Mark Crispin Miller, "None Dare Call It Stolen," Harper's, August 2005.

191) Incidents in Warren County were catalogued in a series of articles by the Cincinnati Enquirer:

Erica Solvig, "No Changes in Final Warren Co. Vote Count; E-mails Released Monday Show Lockdown Pre-planned," Cincinnati Enquirer, November 16, 2004.

Erica Solvig, "Warren's Vote Tally Walled Off; Alone in Ohio, Officials Cited Homeland Security," Cincinnati Enquirer, November 5, 2004

Erica Solvig and Dan Horn, "Warren Co. Defends Lockdown Decision; FBI denies warning officials of any special threat," Cincinnati Enquirer, November 10, 2004.

Erica Solvig, "Warren Co. Recount Goes Public; After Election Night lockdown, security eases up," Cincinnati Enquirer, December 15, 2004.

192) Erica Solvig, "Warren's Vote Tally Walled Off; Alone in Ohio, Officials Cited Homeland Security," Cincinnati Enquirer, November 5, 2004.

193) Analysis conducted through official vote tallies posted on the Ohio Secretary of State Web site.

194) "Preserving Democracy," pg. 52.

195) Analysis conducted through official vote tallies posted on the Ohio Secretary of State Web site.

196) Joan Mazzolini, "Workers Accused of Fudging '04 Recount; Prosecutor Says Cuyahoga Skirted Rules," The Plain Dealer, April 6, 2006.

197) Malia Rulon, "Congressman Calls for FBI Investigation Into Ohio Election," The Associated Press, December 15, 2004.

198) Affidavit, December 13, 2004, Sherole Eaton, Re: General Election 2004, Hocking County.

199) Jon Craig, " '04 Election in Hocking County; Worker Who Questioned Recount is Asked to Quit," Columbus Dispatch (Ohio), June 1st, 2005.

200) "Preserving Democracy," pg. 81.

201) www.opensecrets.org

202) "Preserving Democracy," pg. 82.

203) "Preserving Democracy," pg. 83.

204) Ohio Secretary of State's press office.

205) Count Every Vote Act of 2005

206) Dena Bunis, "Senate Limits Immigration Debate," The Orange County Register, May 24, 2006.

207) Tokaji's blog, Election Law at Moritz, "McConnell's Voter ID Amendment," May 22, 2006.

208) United States District Court Northern District of Georgia, Rome Division

ROBERT F. KENNEDY JR.

Posted Jun 01, 2006 5:02 PM

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

Given some of the issues in this report, I am also interested in hearing how this EAC is addressing the needs for voters to cast ballots securely and privately?

Furthermore, last week marked the start of the 2006 hurricane season, which reports indicate would possibly be even worse than the devastation last year. The residents of the Gulf Coast States witnessed entire towns and cities destroyed in the face of Hurricanes Katrina and Rita. In some locations these hurricanes wiped out the entire infrastructure necessary for the citizens to vote. It may be years before the Gulf States start to resemble the great area they were before these storms.

Just a few days ago, several of the Gulf Coast States held Federal primaries, and I understand that some of our Commissioners before us today witnessed these primaries firsthand. I am very interested in hearing the Commissioners' assessment of how States are handling these election difficulties in the absence of an election infrastructure.

I am also greatly concerned that we have forgotten the victims of the Hurricanes Katrina and Rita. I will continue to fight for my legislation, H.R. 4140, the Ensuring Ballot Access to Hurricanes Katrina and Rita Victims Act of 2005, which would authorize the EAC to provide up to $50 million in grants to the States affected by hurricanes.

These grants are not, however, a blank check. States would have to submit detailed plans to EAC in order to receive funding, reestablish voter registration lists, reconstruct destroyed polling stations, make polling stations fully accessible to those with disabilities, and restore and replace supplies, materials, and equipment used in the administration of elections.

Companion legislation introduced by Senator Trent Lott and Chris Dodd passed in the Senate by voice vote on February 9th of this year, and I am still waiting for the House to step up to the plate and do the same.

As you recall, January 1st of 2006 marked the deadline for States to comply with two additional requirements of HAVA. First, each polling station must have at least one machine that is fully accessible for individuals with disabilities. States may satisfy this obligation with the use of a direct recording electronic voting system, DRE.

DRE machines were looked at as the great panacea to the problems associated with the 2000 elections, but much concern continues to brew since the signing of HAVA. How is the EAC handling this situation? I am very disturbed by the news reports surrounding DRE machines and recent attempts to expand voting identification requirements. Are you presently working on reports on these topics, and when would you inform the Congress of any findings?

The other requirement that went into effect requires each State's chief election official to implement in a uniform and nondiscriminatory manner a single uniform, interactive, official centralized system to handle statewide computerized voting registration list. This list is to be defined, maintained and administered at the State level, which will contain the name and registration information of

every legally registered voter in the State and assign a unique identifier to each legally registered voter in the State.

I believe that if implemented correctly, this mechanism can be the key to cutting down on voter fraud. However, many States received waivers in 2004 for both of these important requirements. Are all States fully compliant with these mandates now; and if not, what is EAC doing to make sure the States are fully ready for the November elections?

Lastly, I believe many of the problems associated with the 2004 election could be tracked back to poor poll worker training and recruitment. For the most part volunteers run our elections for many long hours and on very little pay. So what are you doing to provide solutions to this major problem?

We can and must work to address these problems, and I look forward to working with the Chairman and other Members to continue improving the voting process.

I would like to place in the record a letter I wrote to the Committee on Appropriations requesting that they provide the remaining $800 million authorized by HAVA.

[The information follows:]

MAJORITY

VERNON J. EHLERS, MICHIGAN,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN L. MICA, FLORIDA
JOHN T. DOOLITTLE, CALIFORNIA
THOMAS M. REYNOLDS, NEW YORK
CANDICE S. MILLER, MICHIGAN

WILLIAM PLASTER,
STAFF DIRECTOR

U.S. House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

(202) 225-8281
www.cha.house.gov

MINORITY

JUANITA MILLENDER-McDONALD, CALIFORNIA
RANKING MEMBER

ROBERT A. BRADY, PENNSYLVANIA
ZOE LOFGREN, CALIFORNIA

GEORGE F. SHEVLIN,
MINORITY STAFF DIRECTOR

May 16, 2006

Honorable Jerry Lewis
Chairman
Committee on Appropriations
H218 Capitol
U.S. House of Representatives
Washington, DC 20515

Honorable David Obey
Ranking Member
Committee on Appropriations
1016 Longworth House Office Building
U.S. House of Representatives
Washington, DC 20515

Chairman Lewis and Ranking Member Obey:

The 2000 election debacle highlighted the need for election administration reform in the United States. To address the systemic election administration problems faced in 2000, Congress enacted the Help America Vote Act of 2002 (HAVA), which authorized crucial resources for states to fund improvements in election infrastructure and establish new standards for voting systems. Additionally, HAVA created the U.S. Election Assistance Commission (EAC) to administer the HAVA funds and help states comply with these new requirements.

HAVA authorized $3.9 billion for Fiscal Year 2003 through Fiscal Year 2005 to pay for the improvement of elections. With your assistance, Congress has generously appropriated funding for more than $3 billion of this authorization so far. The EAC has distributed all the appropriated funds to the states. However, states desperately need the remaining funding to continue implementing HAVA's requirements in the coming years.

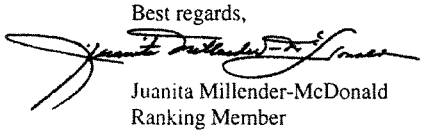
Thus far, states have prudently used the funds authorized by HAVA to implement many of the mandated changes now required by law. Such changes include implementing reforms of provisional balloting procedures, updating voting equipment, improving disability access to polling places, developing and implementing a new statewide voter registration database system, training poll workers, and educating voters about the new procedures and equipment. These changes have been necessary in an attempt to ensure that the United States does not witness an election similar to the chaos observed in 2000 of some who were disenfranchised in 2004.

A vast coalition of groups, including organizations representing state and local election officials as well as civil and disability rights groups, have recently corresponded with me about their concerns about the need for HAVA funding. In fact, every organization emphasized that full funding of HAVA is essential to the success of our democracy.

Congress must continue to support HAVA and take every reasonable step to ensure that all Americans have confidence in the fairness and accuracy of our elections. Therefore, I respectfully request your support of this need to protect American democracy and include funding in the Treasury-Transportation Appropriations Bill for Fiscal Year 2007 for the remaining $800 million balance of HAVA requirement payments due to the states. If America can continue to spend billions of dollars to support the construction of democracy in Iraq, Afghanistan, and throughout the world, certainly we should fully fund our commitment to improve voters' elections here at home.

If you have any questions or would like to discuss this matter further, please contact me or my elections counsel, Thomas Hicks, at 225-2061.

Best regards,



Juanita Millender-McDonald
Ranking Member

Ms. MILLENDER-MCDONALD. I will persist in my efforts to seek full funding for EAC to continue its critical work of improving the electoral process. Even if one voter is disenfranchised, that is one voter too many.

Mr. Chairman, I thank you for convening this very important hearing and look forward to hearing the testimony from this very esteemed Commission and their answers to the questions that I have raised. Thank you.

The CHAIRMAN. I thank you for your statement.

[The statement of Ms. Millender-McDonald follows:]

MAJORITY

VERNON J. EHLERS, MICHIGAN,
CHAIRMAN

ROBERT W. NEY, OHIO
JOHN L. MICA, FLORIDA
JOHN T. DOOLITTLE, CALIFORNIA
THOMAS M. REYNOLDS, NEW YORK
INDICE S. MILLER, MICHIGAN

WILLIAM PLASTER,
STAFF DIRECTOR

U.S. House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

(202) 225-8281

www.cha.house.gov

MINORITY

JUANITA MILLENDER-McDONALD, CALIFORNIA
RANKING MEMBER

ROBERT A. BRADY, PENNSYLVANIA
ZOE LOFGREN, CALIFORNIA

GEORGE F. SHEVLIN,
MINORITY STAFF DIRECTOR

CHA Oversight Hearing on Election Assistance Commission

June 8, 2006

10:00 AM
1310 Longworth House Office Building

OPENING STATEMENT OF
REP. JUANITA MILLENDER-MCDONALD, RANKING MEMEBR

I would like to thank the Chairman for calling this very important oversight hearing. The Election Assistance Commission (EAC) was formed after the 2000 Presidential election by the Help America Vote Act (HAVA) to serve as the national clearinghouse for all matters involving elections administration. Pursuant to HAVA, the EAC has distributed billions of dollars to the states to improve the facilitation of election operations. In the short period of the EAC's existence, our elections have benefited from the guidance, research, and standards provided by the Commission. Nevertheless, improvements are still needed.

HAVA is proving to be a solid foundation upon which we can institute further electoral improvements. HAVA made it easier for voters to cast a ballot and harder for people to knowingly commit fraud. Despite the overall success of HAVA, the 2004 elections revealed several high profile failures in the system that resulted in a few areas we need to address.

This committee held an oversight hearing in Ohio where we listened to testimony and read numerous reports of voters waiting in line for more than 10 hours to cast a ballot and over 100,000 provisional ballots going uncounted. This situation should not happen in the 21st Century. Airlines and the TSA move millions of passengers a day from the curb to their final destination with fewer problems. **(There is also a report from *Rolling Stone* that I would like to include in the Record.)** Given some of the issues in this report, I am also interested in hearing how the EAC is addressing the need for voters to cast ballots securely and privately.

Furthermore, last week marked the start of the 2006 Hurricane season, which reports indicate could possibly be even worse than the devastation of last year. The residents of the Gulf Coast states witnessed entire towns and cities destroyed in the face of Hurricanes Katrina and Rita. In some locations, these hurricanes wiped out the entire infrastructure necessary for citizens to vote. It may be years before the Gulf States start to resemble the great area they were before these storms. Just a few days ago, several of the Gulf States held Federal primaries, and I understand some of the Commissioners before us today witnessed these primaries first hand. I am very interested in hearing the Commissioners' assessment of how states are handling these election difficulties in the absence of an election infrastructure.

I am greatly concerned that we have forgotten the victims of the Hurricanes Katrina and Rita. I will continue to fight for my legislation H.R. 4140, the "Ensuring Ballot Access for Hurricanes Katrina and Rita Victims Act of 2005," which would authorize the EAC to provide up to $50 million in grants to the states affected by Hurricanes Katrina and Rita. These grants are not, however, a blank check. States would have to submit detailed plans to EAC in order to receive funding to re-establish voter registration lists, reconstruct destroyed polling stations, make polling places fully accessible to those with disabilities, and restore and replace supplies, materials, and equipment used in the administration of elections. Companion legislation introduced by Senators Trent Lott and Chris Dodd passed the Senate by voice vote on February 9th of this year, and I am still waiting for the House to step up to the plate and do the same.

As you recall, January 1, 2006 marked the deadline for states to comply with two additional requirements for HAVA. First, each polling station must have at least one machine that is fully accessible for individuals with disabilities. States may satisfy this obligation with the use of a direct recording electronic voting system (DRE). DRE machines were looked at as the great panacea to the problems associated with the 2000 election, but much concern continues to brew since the signing of HAVA. How is the EAC handling this situation? I am very disturbed by the news reports surrounding DRE machines and recent attempts to expand voter identification requirements. Are you presently working on reports on these topics? When could you inform the Congress of any findings?

The other requirement that went into effect requires each state's chief election official to implement, in a uniform and nondiscriminatory manner, an interactive and centralized system to handle a statewide computerized voter registration list. This list is to be defined, maintained, and administered at the state level which will contain the name and registration information of every legally registered voter in the state, and assign a unique identifier to each legally registered voter in the state. I believe that if implemented correctly, this mechanism can be the key to cutting down on voter fraud. However, many states received waivers in 2004 for both of these important requirements. Are all states fully compliant with these mandates and, if not, what is EAC doing to make sure the states are ready for the November election?

Lastly, I believe many of the problems associated with the 2004 election could be traced back to poor poll worker training and recruitment. For the most part, volunteers run our elections for many long hours and on very little pay. What is EAC doing to provide solutions to this major problem?

We can and must work to address these problems and I look forward to working with the Chairman and other Members to continue improving the voting process. I would like to place in the record a letter I wrote to the Committee on Appropriations requesting that they provide the remaining $800 million authorized by HAVA. I will persist in my effort to seek full funding for EAC to continue its critical work of improving the electoral process. Even if one voter is disenfranchised, that is one voter too many.

Thank you again, Mr. Chairman, for convening this hearing. I look forward to hearing the testimony from this esteemed Commission and their answers to my questions I have raised.

The CHAIRMAN. We have been joined by someone who could rightfully be called the father of HAVA, Congressman Ney, the gentleman from Ohio.

Mr. NEY. Thank you.

Sometimes children are bad and sometimes they aren't. I think this child has been good. It was a pleasure actually to work with Steny Hoyer when the hanging chad and dimpled and pregnant chad came up in Florida.

I think at first people thought the bill would just be about that, but it went way beyond that. We got a college program and a high school program because our Ranking Member had mentioned about voter education, and actually that is going to be a great way to help with this.

Then it went—of course, the bill came from the Senate with Senator Dodd and Senator McConnell and Senator Bond as the main principals. Some, I think, very thoughtful provisions were added, and the rest is history.

I think the Congress voting for this also can be very proud. For the first time in many people's lives, the blind are able to vote in privacy. And I know I have had a lot of calls from people that have said that they were able to cast their first vote.

But HAVA was a complicated bill. It took a long time to do. One of the main components of it is the EAC. Of course, that is why you are here, and I thank the Chairman and Ranking Member for having the hearing today.

I did want to mention, I was a little bit late in coming, but we did have a hearing in Columbus, Ohio, and Wisconsin. I thought the hearing in Columbus was a very good hearing because it showed a lot about the Federal end of it with the EAC, and we never attempted to federalize it, but it also showed how HAVA was going to be carried out within a State and other States that we looked at.

So I am not going to take a lot of time to read a statement; I will put it in without objection, Mr. Chairman, for the record, because I want to hear what you have to say, and also in the area of the security, because there is a lack of consensus among election officials, very interested in provisional voting. Provisional voting that we all agreed in the House and Senate on I think is a very good way to stop disenfranchisement of people as they go to vote.

We had a couple of cases, in fact, in my district where somebody went in to vote, and they said, you already voted; and the young man insisted, I didn't; and they had a provisional ballot, ended up his vote was counted. Now, had that not happened with HAVA and the provisional voting, that young man might have been turned away from the polls. This was a huge thing.

There is a lot of issues, as you know. The other thing that is frustrating, I worked with Congressman Hoyer, the Chairman and Ranking Member and Speaker—or Leader Pelosi. If we can get that remaining amount of money—we funded about 3 billion, which is great, but we need to get that remaining amount of money into this bill.

With that, I appreciate all of you being here, appreciate the job. You have made history as the first EAC, the first elections commission in the country, and so I credit you for getting up and running

as fast as you did, and I know without going into a lot of details the money didn't immediately flow for you. It wasn't made the easiest maybe by the Congress. So thank you.

The CHAIRMAN. Thank you, Mr. Ney.

Any other opening statements will be entered into the record without objections. So ordered.

We will now commence with testimony from our panel of witnesses; first, Paul S. DeGregorio, Chairman of the Election Assistance Commission. The other names will not be in order of testimony, but some other order: Ray Martinez, III, Vice Chairman; Donetta L. Davidson, Commissioner of the Election Assistance Commission; and Gracia M. Hillman, Commissioner of the Election Assistance Commission.

We will first turn to Mr. DeGregorio for his testimony. You are recognized for 5 minutes. I assume you are experienced enough to know our clock system. The green means go, go, go. The yellow means get ready to stop. The red means stop. Then the trap door opens if you go beyond that.

So with that, we recognize you, Mr. DeGregorio.

STATEMENT OF PAUL S. DeGREGORIO, CHAIRMAN, ELECTION ASSISTANCE COMMISSION

Mr. DEGREGORIO. Good morning, Mr. Chairman, Ms. Ranking Member and Congressman Ney. The U.S. Election Assistance Commission is pleased to be here to discuss the broad changes in the election administration process that have been effectuated by the Help America Vote Act of 2002, and, more specifically, the EAC's role in supporting State and local governments to implement HAVA reforms.

In our testimony we will review the new election administration requirements imposed by HAVA, the efforts of election administrators nationwide to implement those changes, and what Americans can expect from the 2006 Federal elections.

Although the EAC is amongst the smallest of independent Federal Commissions, it may have the greatest impact on the largest number of persons. The changes that the Commission has helped State and local governments make will affect every voter in this country. We appreciate the vested interest that this Committee has in our work and the support we have received.

2006 is a year of changes, challenges and progress in election reform and HAVA implementation. An estimated one in three voters will use new voting devices this year. Just this past Tuesday, eight States conducted their Federal primary elections, and in most of those States new voting devices were used for the first time by millions of voters.

In all of the 2006 primaries and in the November general election to come, we know that because of HAVA, these new voting systems will empower voters to verify choices, change their selection, and be notified in the event of an overvote.

This year many Americans with disabilities will vote privately and independently for the very first time. I have witnessed this on many occasions, and it is truly an inspirational event.

This year many States are using a statewide voter registration database for the first time as required by HAVA. These lists will

result in cleaner voter rolls, facilitating the prevention of voter fraud, and reducing the need for provisional balloting.

These are just two concrete examples of the progress being made towards upgrading the nation's voting systems and how some of the 3.1 billion in HAVA dollars has been spent.

Mr. Chairman, the United States has experienced more election administration reform in the past 5 years than at any period in its history. We see new technology, improved procedures and greater access to the polls. However, the road to implement reform has not always been easy. All this change has meant great challenges for election officials and voter advocates.

The task of recruiting, training and retaining poll workers and educating voters on new systems has never been harder, but we have learned a lot over the past few years. We know that most residual problems are the result of human error, and, fortunately, these problems can be mitigated through improved management practices.

As you will learn from my colleagues, the EAC is working hard to assist State and local officials. Not only can we offer our own sound practice guidelines, but we are sharing important data collected during HAVA-mandated research through our clearinghouse function.

All of these efforts will help State and local officials nationwide improve election administration no matter how unique their situation.

I am particularly proud of the important role the EAC has played in helping the States whose election processes were severely disrupted by Hurricanes Katrina and Rita. Soon after the extent of the damage was known, we brought State and local officials in the Gulf Region together with Federal authorities and fellow local election officials who experienced similar disasters. These meetings proved to be very beneficial, and we are anticipating a successful 2006 general election in the region.

I believe the EAC has proven the significant part it can play in helping State and local election officials respond to various challenges.

Mr. Chairman, I was pleased to report that the Voluntary Voting System Guidelines were issued in December 2005 within the HAVA-mandated 9-month deadline. They provide for greater security and usability of election systems. We are already working with the National Institute of Standards and Technology on future iterations.

In addition to our continuing advisory role to local election officials, the EAC is focused on two important projects in 2006. Our top priority is to establish a thorough, rigorous and transparent voting system certification program, and we are working closely with NIST to do so.

Recognizing that the $3.1 billion in HAVA funds are already distributed and need to be accounted for, our Inspector General has an active audit and monitoring program underway.

Finally, Mr. Chairman, it has been an honor to serve on this Commission with these three distinguished Americans. They will now share with you more information on the work of the EAC, and I will turn to Commissioner Hillman for further remarks.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

[The statement of Mr. DeGregorio follows:]

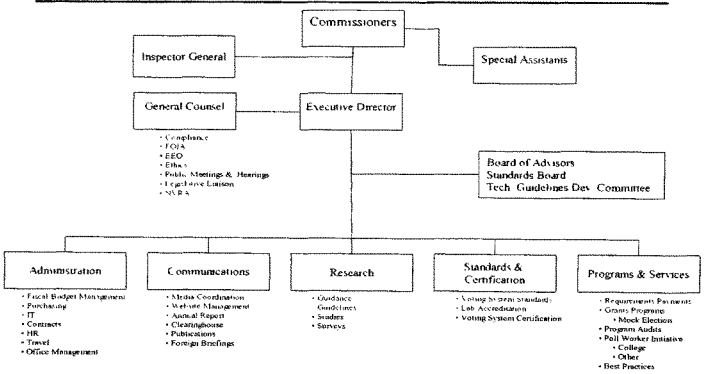
Good morning Mr. Chairman and Members of the Committee. The U.S. Election Assistance Commission (EAC) is pleased to be here to discuss changes in the election administration process that have been effectuated by the Help America Vote Act of 2002 (HAVA) and the role that EAC plays in supporting the states and local governments in implementing HAVA reforms. In our testimony, we will review the new election administration requirements imposed by HAVA, the efforts of election administrators to implement those changes, and what America can expect from its elections in 2006.

Although EAC is amongst the smallest of independent Federal commissions, it may have the greatest impact on the largest number of persons. The changes that EAC has helped states and local governments make in Federal election administration will affect every voter in this country. We appreciate the vested interest that this Committee has in our work and the support we have received. We recognize the importance of what you have done for America as the authorizers of HAVA and look forward to today's discussions.

INTRODUCTION

EAC is a bipartisan commission consisting of four members: Paul DeGregorio, chairman; Ray Martinez III, vice chairman; Donetta Davidson; and Gracia Hillman. In addition to the four commissioners, EAC employs 19 full-time staff persons.

U.S. Election Assistance Commission
2006 Organizational Chart



EAC's mission is to guide, assist, and direct the effective administration of Federal elections through funding, innovation, guidance, information and regulation. In doing so, EAC has focused on fulfilling its obligations under HAVA and the National Voter Registration Act

(NVRA). HAVA charges the EAC with assisting the 50 states, four territories and the District of Columbia in implementing HAVA's election reform measures including provisional voting, voting information, updated and upgraded voting equipment, statewide voter registration lists, administrative complaint procedures, and voter identification requirements and procedures. Pursuant to HAVA and NVRA, EAC is responsible for developing the National Voter Registration form, collecting information for Congress and advising states of their responsibilities. HAVA also makes EAC responsible for collecting information on the number of ballots sent to and returned by military and overseas voters.

EAC has employed four strategic objectives to meet these statutory requirements: Distribution and Management of HAVA Funds, Aiding in the Improvement of Voting Systems, National Clearinghouse of Election Information, and Guidance and Information to the States. Each of these programs will be discussed more fully below.

HAVA ELECTION REFORMS

In October 2002, Congress, with the leadership and overwhelming bipartisan support of the members of this Committee, passed HAVA. HAVA represents an unprecedented effort by Congress to enhance the administration of Federal elections through funding, guidance and policies. 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 elections. The law recognized the need to invest in our election infrastructure and set out a comprehensive program of funding, guidance, and ongoing research that spans the course of many years.

HAVA established three major funding programs to facilitate improvements in the administration of elections, and Congress appropriated more than $3 billion in funding to be distributed through those programs. Funds distributed under HAVA may be used for the following purposes: (1) to improve voting systems, (2) to establish and implement a statewide voter registration list, (3) to implement provisional voting, (4) to provide information to the public in the polling place, (5) to verify and identify voters in the voter registration and voting processes; and (6) to otherwise improve the administration of elections for Federal office. Each of these uses is discussed in detail below.

Improving Voting Systems

HAVA established minimum requirements for voting systems used in Federal elections. Each voting system must:

- **Permit the voter to verify the selections made prior to casting the ballot;**
- **Permit the voter to change a selection prior to casting the ballot;**
- **Notify the voter when an overvote occurs (making more than the permissible number of selections in a single contest);**
- **Notify the voter of the ramifications of an overvote;**

- Produce a permanent paper record that can be used in a recount or audit of an election;
- Provide accessibility to voters with disabilities;
- Provide foreign language accessibility in jurisdictions covered by Section 203 of the Voting Rights Act; and
- Meet the error rate standard established in the 2002 Voting System Standards.

According to HAVA, the requirement for access for voters with disabilities can be satisfied by having one accessible voting machine in each polling place. In addition to these requirements, Congress provided an incentive for states that were using punch card or lever voting systems by providing additional funding on a per precinct basis to replace those outdated systems with a voting system that complies with the requirements set out above.

Statewide Voter Registration Lists

HAVA requires that the name of every registered voter in a state be contained on a centralized, computerized list that is defined, maintained, and administered by the state. The list must act as the official list of registered voters. Each voter that is entered on the list must be assigned a unique numerical identifier. Furthermore, the list must be compared with other state and Federal data sources, such as the state motor vehicles list, state and Federal lists of convicted felons, death records from vital statistics, and social security records to verify the identity of the registrant.

Provisional Voting

Although many states had some provision for fail-safe, affidavit or even provisional voting, HAVA established a uniform program for provisional voting to be applied by all states in Federal elections. Persons who appear at a polling place on Election Day and whose names are not contained on the list of registered voters must be given a provisional ballot if those persons certify that they are registered voters and are eligible to vote in the election. A provisional ballot is counted only if the person's registration and eligibility are confirmed after the election. HAVA further requires that there be a mechanism to notify the provisional voter if his or her ballot was counted and if not, why not.

Polling Place Information

Section 302(b) of HAVA requires the following information to be posted in the polling place on Election Day:

- A sample ballot;
- Date of the election;
- Hours that the polling place is open;
- Instructions on how to vote (casting a ballot or voting a provisional ballot);
- Instructions for persons who registered to vote by mail;

- Instructions for first-time voters;
- Information on voting rights; and
- General information on Federal and state laws regarding fraud and misrepresentation.

Verification and Identification of Voters

All persons who register to vote after January 1, 2003 must provide their driver's license number, if they have one. If the registrant does not have a driver's license, the last four digits of the person's social security number are required. An election official must verify this information and is prohibited from processing the voter registration if this identifying information is not provided. Only when the applicant has been issued neither a driver's license nor a social security number may the election official assign a unique identifier and process the application without the required information.

HAVA requires that all persons who register by mail present identification upon voting for the first time in a Federal election. That identification can be a picture identification card issued by a government or a utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter. If the voter provided the required information discussed above (driver's license number or last four digits of the social security number) and that information is verified, then the first-time voter is not required to provide identification at the polls.

Improving the Administration of Elections for Federal Office

HAVA also allows states to use the funding to improve the administration of elections for Federal office. Although there are countless potential ways that a state could use HAVA funds to improve the administration of elections for Federal office, HAVA identified some specific uses in Section 101:

- Educating voters concerning voting procedures, voting rights and voting technology;
- Training election officials, poll workers, and election volunteers;
- Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting ballots;
- Improving the accessibility and quantity of polling places, including physical access for individuals with disabilities, providing nonvisual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language;
- Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

ROLES AND RESPONSIBILITIES UNDER HAVA

Elections in this country are conducted based upon a decentralized system. Local government entities, such as counties and in some cases towns and cities, are primarily responsible for the administration of elections, whether local, state or Federal. In a few instances, the state is the entity primarily responsible for election administration. Even in those cases, the local governments are still responsible for a great deal of the work. HAVA recognized the important role of the states in conducting Federal elections while at the same time requiring a nationwide effort to make the administration of Federal elections more uniform and consistent. Under HAVA, Federal, state and local governments each participate in meeting its requirements.

State and Local Government Responsibilities Under HAVA

States Exercise Responsibility in Implementing HAVA

States and local governments are responsible for planning, buying new systems, and implementing the reforms of HAVA. For example, while HAVA requires that states update voting equipment, it does not specify the type or brand of voting equipment. The decision of which voting system best fits the needs of a state or local jurisdiction is left to those entities. Similarly, the structure and operation of the state's database of registered voters are decisions left to the state, limited only by the required functions set forth in HAVA.

The states have exercised these responsibilities and have made choices that best suit their specific needs. For instance, at least 25 states require voter verifiable paper audit trails (VVPAT). Conversely, 18 states have opted to implement or continue the use of electronic voting without this additional measure.

Another example of states exercising their responsibilities has been how to structure their statewide voter registration lists. The vast majority of states have opted for a "top-down" model, which uses a single central computer for the maintenance of the state's official voter list. However, nine states use a "bottom-up" or hybrid model. The bottom-up approach allows counties to maintain their own distinct databases while requiring them to upload that information on a regular basis to the state for verification and matching purposes. The cleaned list is then transmitted back to the counties and serves as the official list of registered voters. A hybrid system employs some elements of both the "top-down" and "bottom-up" models.

Ways of implementing the voter identification requirements set forth in Section 303(b) of HAVA also vary from state to state. While some states opted to implement the minimum identification requirements for first time voters who registered to vote by mail, others employ a more comprehensive method, adopting voter identification requirements for all voters, regardless of how they registered to vote or whether they are voting for the first time.

States Are Responsible for Appropriate Use of HAVA Funds

Each state is the official grantee of HAVA funds, and it is ultimately responsible for the appropriate use of the funds, regardless of whether the funds are spent by the state or the local government. States are responsible for providing regular reports on the use of HAVA funds by both the state and local government entities within the state. If funds are not used timely, such as in the case of the replacement of lever and punch card voting systems, or if funds are used for expenses not allowed under HAVA, the state bears the responsibility for repaying those funds.

States Are Ultimately Responsible for Implementation of HAVA

States and local governments have their own distribution of powers regarding decisions on voting systems and other issues that affect HAVA implementation. However, because HAVA charges states with primary responsibility for implementing compliant voting systems, statewide voter registration lists, provisional voting and the other requirements of HAVA, the state bears the responsibility for meeting these requirements regardless of level of participation or decisions made by local governments. Based upon the funding agreements between states and local governments, local governments may have responsibility to the state if they fail to meet one or more of the mandates of HAVA.

Federal Government Responsibilities Under HAVA

The responsibility of the Federal government under HAVA is divided among several different agencies that are responsible for disbursing funds, giving guidance to the states, monitoring the use of HAVA funds, and enforcing the requirements of HAVA.

Election Assistance Commission

HAVA directs EAC to distribute and monitor the use of HAVA funds, assist the states with voting technology improvements, certify voting systems according to national standards, provide guidance and assistance to the states regarding the meaning and implementation of HAVA, and establish a national clearinghouse of election administration information. In addition, EAC is responsible for enforcing compliance with Section 102 of HAVA by reclaiming funds based on the number of precincts in a state that do not comply. Each of these responsibilities will be discussed in detail below.

General Services Administration

Prior to the existence of EAC, which became operational in 2004, the General Services Administration (GSA) was responsible for establishing the funding programs authorized under HAVA. GSA received certifications and distributed funds under Sections 101 and 102 of HAVA.

Health & Human Services

The Department of Health and Human Services is authorized to and has distributed grants to improve accessibility of polling places and voting processes to persons with disabilities.

Department of Justice

The Department of Justice (DOJ) has the responsibility of enforcing the provisions of HAVA. DOJ enforces whether a state has met the requirements of Title III, but does not have enforcement authority over the other titles of HAVA. To date, New York and Alabama have been sued by DOJ for failure to meet HAVA's mandates. In addition, prior to January 1, 2006 and the occurrence of the HAVA deadlines, DOJ entered into a consent agreement with the state of California regarding their list of registered voters.

Government Accountability Office

GAO is responsible under HAVA for conducting one audit during the course of the HAVA program. In addition to this work, GAO has completed several reviews of election administration practices and election systems in response to requests by members of Congress.

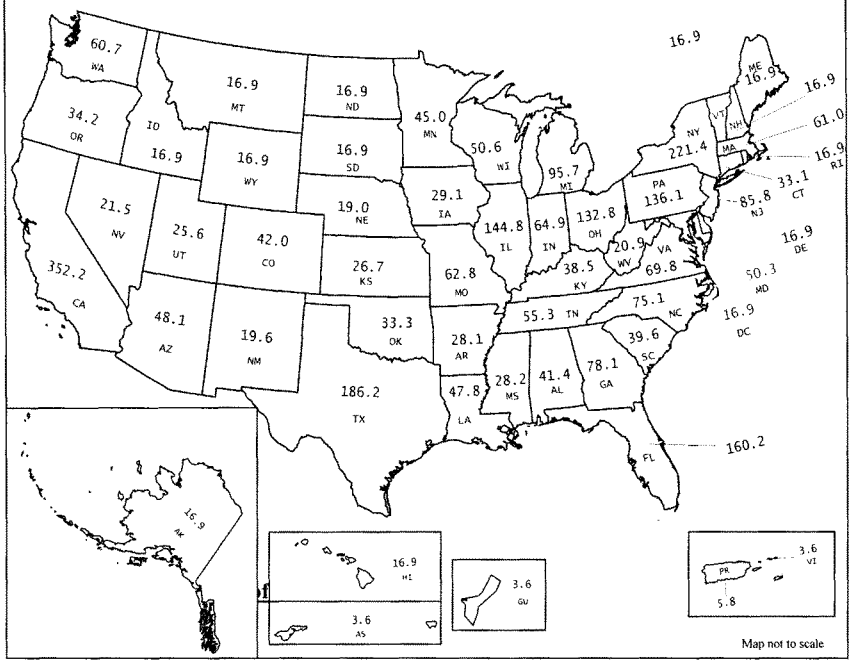
EAC'S ROLE AND RESPONSIBILITIES UNDER HAVA

Distribution and Management of HAVA Funds

HAVA represents the first time, Federal funds have been provided to improve 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 appropriated more than $3,000,000,000 to help states meet the requirements of HAVA and improve the administration of Federal elections. HAVA programs such as the College Poll Worker program, the National Parent-Student Mock election, and the program to ensure access for individuals with disabilities have been funded by Congress in the amounts of $950,000, $400,000, and $33,000,000, respectively.

All HAVA sections 101, 102 and 251 funds appropriated have been distributed. The tables located on EAC's website (Title II Requirements Payments & Early Money) show the disbursement of funds by category and fiscal year. The graphic below shows the funds distributed to each state, including funds distributed by the Department of Health and Human Services under Section 261 of HAVA.

Total HAVA Funds Distributed to States as of December 21, 2005 (in millions)



Now that the election reform funding has been distributed, EAC is working to ensure that states are good stewards of these Federal funds. To monitor the use of these funds, EAC issues guidance and answers questions on the appropriate use of HAVA funds, reviews reports submitted by the states and territories on expenditure of the funds, and conducts assessments and audits of the states.

Appropriate Uses of HAVA Funds

HAVA specifically limits the use of funds distributed under the various funding programs. These uses include purchasing voting equipment to replace punch card or lever voting systems, implementing provisional voting, purchasing equipment and software to build statewide voter registration lists, as well as various activities aimed at improving the administration of Federal elections. To help clarify the appropriate uses of HAVA funds, EAC and GSA applied OMB Circulars A-87, A-102, and A-133. In addition, EAC provided guidance and information on the

appropriate use of HAVA funds in response to questions from the states. Even with these resources, EAC must answer questions daily from the fifty states, four territories and the District of Columbia about allowable expenses under HAVA.

EAC requires that states, territories and the District of Columbia report their uses of HAVA funds. In the second quarter of each fiscal year, states report on their use of both Title I and Title II funds. The Title II report includes: (a) a list of expenditures for each category of activities described in Title III; (b) the number and types of voting equipment obtained with the funds; and (c) an analysis and description of the activities funded to meet HAVA requirements and how such activities conform to the state plan. Title I reports require states to: (1) disclose, in separate reports for section 101 and 102 funds, the financial activity for the previous calendar year on a Standard Form 269; and (2) provide the same detail on the expenditures that is required for the reports on Title II requirements payments. EAC conducts a detailed review of each report to validate that the expenditure of funds met the requirements of HAVA and was in accordance with plans filed by the state or territory. The states' Title I and Title II reports are available to the public upon request.

Auditing

Section 902 of HAVA gives EAC and other HAVA granting agencies the authority to conduct regular audits of HAVA funds. EAC's audit activity is conducted through EAC's Office of the Inspector General (OIG), which currently conducts two types of reviews to determine if the states are exercising sufficient controls and using HAVA funds distributed for appropriate purposes. One is an assessment of procedures each state uses to administer and monitor HAVA funds, as well as a review of certain critical elements such as whether the state has maintained sufficient matching funds. On a concurrent track, OIG will commission audits of several states each year to more fully review the state's internal controls, processes, procedures, and transactions to ensure compliance with Government Auditing Standards.

In addition to EAC's regular audits, HAVA also provides for two other means of extraordinary audit authority: (a) funds are subject at least once during the term of the program to an audit by the Comptroller General; and (b) section 902(b)(6) of HAVA allows EAC to conduct a "special audit" or "special examination" of the funds that are subject to regular audit under Section 902(b)(1). This special audit authority covers every HAVA program, including funds distributed under Title I, Title II and programs administered by the Department of Health and Human Services. If EAC determines that a special audit is warranted, by vote of the Commission, EAC will refer the matter to the OIG for review.

Aiding in the Improvement of Voting Systems

One of the most enduring effects of HAVA will be the change in voting systems used throughout the country. All major HAVA funding programs can be used by states to replace outdated voting equipment. HAVA also provides for the development and maintenance of testable standards

against which voting systems can be evaluated. It also provides for Federal certification according to these standards. EAC is responsible for and committed to improving voting systems through these vital programs.

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 updated voting system guidelines, which prescribe the technical requirements for voting system performance and identify testing protocols to determine how well systems meet these requirements. EAC along with its Federal advisory committee, the Technical Guidelines Development Committee (TGDC), and the National Institute of Standards and Technology (NIST), work together to research and develop voluntary testing standards.

On December 13, 2005, EAC adopted the first iteration of the Voluntary Voting System Guidelines (VVSG). The final adoption of the VVSG capped off nine months of diligent work by NIST and the TGDC. In May of 2005, the TGDC delivered its draft of the VVSG. EAC then engaged in a comprehensive comment gathering process, which included gathering comments from the general public as well as from members of its Board of Advisors and Standards Board. Interested persons were able to submit comments on-line through an interactive web-based program, via mail or fax, and at three public hearings (New York, NY; Pasedena, CA; Denver, CO). EAC received more than 6,000 individual comments. EAC teamed up with NIST to assess and consider these comments, many of which were incorporated into the final version.

The VVSG is an initial update to the 2002 Voting System Standards focusing primarily on improving the standards for accessibility, usability and security. These testing guidelines also incorporated standards for reviewing voting systems equipped with voter verifiable paper audit trails (VVPAT)[1] in recognition of the many states that now require this technology. VVSG also establishes testing methods for assessing whether a voting system meets the guidelines.

Significant work remains to be done to fully develop a comprehensive set of standards and testing methods for assessing voting systems and to ensure that they keep pace with technological advances. In FY 2007, EAC along with TGDC and NIST, will revise sections of the VVSG dealing with software, functional requirements, independent verification, and security and will develop a comprehensive set of test suites or methods that can be used by testing laboratories to review any piece of voting equipment on the market.

[1] VVPAT is an independent verification method that allows the voter to review his/her selections prior to casting his/her ballot through the use of a paper print out. VVPAT is merely one form of independent verification. EAC is currently working with NIST to develop standards for additional methods such as witness systems, cryptographic systems, and split process systems.

Accreditation of Voting System Testing Laboratories

HAVA Section 231 requires EAC and NIST to develop a national program for accrediting voting system testing laboratories. The National Voluntary Laboratory Accreditation Program (NVLAP) of NIST will conduct the initial screening and evaluation of testing laboratories and will perform periodic reevaluation to verify that the labs continue to meet the accreditation criteria. When NIST has determined that a lab is competent to test systems, the NIST director will recommend to EAC that a lab be accredited. EAC will then make the determination to accredit the lab. EAC will issue an accreditation certificate to the approved labs, maintain a register of accredited labs and post this information on its website to fully inform the public about this important process.

In July 2005, NVLAP advertised for the first class of testing laboratories to be reviewed under the NVLAP program and accredited by EAC. Five laboratories have applied for the accreditation program. Pre-assessments of these laboratories began in April 2006 and formal review is proceeding. NVLAP anticipates that those laboratories will be reviewed and those that are eligible to be recommended for accreditation will be delivered to EAC in fall 2006.

In late 2005, EAC invited laboratories that were accredited through the National Association of State Election Directors (NASED) program as Independent Testing Authorities (ITAs) to apply for interim accreditation to avoid a disruption or delay in the testing process. All three ITAs have applied for interim accreditation. Interim accreditation reviews by EAC contractors will begin in spring 2006. ITAs will be accredited on an interim basis until the first class of laboratories is accredited through the NVLAP process. After that time, all testing labs must be accredited through the NVLAP evaluation process.

The National Voting System Certification Program

In 2006, EAC is assuming the duty of certifying voting systems according to national testing standards. Previously, NASED qualified voting systems to both the 1990 and 2002 Voting System Standards. EAC's certification process will constitute the Federal government's first efforts to standardize the voting system industry. EAC's program will encompass an expanded review of voting systems, and it will utilize testing laboratories and EAC technical reviewers. The program will also include quality control assessments, field monitoring, vendor registrations, and enhanced public access to certification information.

Historically, voting system qualification has been a labor intensive process to ensure the integrity and reliability of voting system hardware, software and related components. In six months, NASED received 38 separate voting system test reports for review and qualification. All requests must be received, processed and monitored while the testing laboratory is assessing compliance. Once a test report is produced, technical reviewers must analyze the reports prior to recommending systems for certification. Based upon the NASED data, this process will take anywhere from four to 120 hours per report. In addition, EAC's enhanced testing and

certification program will require reviewers to evaluate voting system technical data packages prior to testing, which will take an additional four to 20 hours per voting system.

National Clearinghouse of Election Information

HAVA establishes EAC as a national clearinghouse of election information, which means EAC studies and provides research about a range of issues including best practices in election administration, hours and places for voting, and election data. EAC has conducted extensive research on a variety of topics related to election administration, begun collecting election-related data annually, and compiled election-related resources such as statutes and regulations.

This information is presented to the election community and to the public through the EAC's website as well as through formal reports on studies and data collections. Using EAC's website as its main means of transmitting information to the public is a useful, accessible and cost effective tool and it will provide the public with the transparency and disclosure that it deserves and expects. As its studies, guidance and best practices are completed, EAC will have an increasing amount of information to store and display through its website. EAC will also use the website to provide information about the VVSG and certification program. Through this clearinghouse, EAC positions itself as a primary source of information about Federal elections.

Research and Study

HAVA requires EAC to conduct a number of studies and provides considerable discretion to research other election administration issues to assist states in their efforts to improve election reform. EAC uses its Federal advisory committees to assist in prioritizing research topics that are important to and that will assist election officials. In 2006, EAC will produce guidance, best practices and reports on the following research topics:

- **Improving Data Collection** – a project focused on combining the Election Day, NVRA and UOCAVA surveys into a single, on-line and user-friendly survey instrument that will be used to collect data on the 2006 Federal election
- **Election Management Guidelines** – a project to develop a comprehensive set of management procedures and training for employees and poll workers. The Management Guidelines will complement the Voluntary Voting System Guidelines and cover the following topics:
    - Storage of equipment
    - Equipment set up
    - Acceptance testing
    - Procurement
    - Use
    - Logic and accuracy (validation) testing
    - Tabulation
    - Security protocols (all phases—storage, set up, transport and Election Day)
    - Training of employees/poll workers
    - Education for voters

- **Effective Designs for Ballots and Polling Place** - a collection of best practices for ballots and voter information/signage that is posted in polling places
- **Best Practices for Poll Worker Training, Recruitment and Retention**
- **Best Practices for College Poll Worker Training, Recruitment and Retention**
- **Vote Fraud and Voter Intimidation**—a thorough review nationwide of laws and procedures that address these issues
- **Vote Count/Recount Procedures**—a review of recount laws and procedures used throughout the country with an eye toward developing best practices for election officials
- **Legal Resources Clearinghouse** – a web-based application that will house a database containing statutes, rules, and regulations as well as state and Federal court decisions

In FY 2007, EAC will focus on completing the research required by HAVA on the use of social security numbers in voter registration, standards for internet voting, and the possibility of postage-free absentee voting. EAC will also collect and analyze data from the 2006 Federal elections including voter turnout, absentee voting, voter registration, and military and overseas citizen voting. The 2006 Election Day Survey will provide comprehensive data indicating the progress states have made in implementing HAVA as well as information about how and where Americans vote.

Guidance and Information to the States

HAVA established EAC to provide guidance and assistance to the states on implementation of the law and transferred to EAC the responsibility of implementing the NVRA. EAC has provided valuable guidance to the states on what HAVA means, implementing the law, and appropriate use of HAVA funds. In FY 2007, EAC will continue that work by developing election management guidance, expanding on its voter registration data base guidance, and by updating and revising the NVRA regulations and national voter registration form. The election management guidance is a comprehensive companion document to the VVSG that will assist states in managing an election from receipt of voting equipment to the reporting of results to the canvass or recount that may follow. EAC's continued work on voter registration lists will study the appropriate use of security measures, verification of voter information using appropriate matching protocols, and sharing information with other state agencies and, ultimately, with other states. EAC will address issues involving voter registration using the Federal form by updating the NVRA regulations and the Federal registration form.

2006: A YEAR OF CHANGE, CHALLENGE AND PROGRESS

The Federal elections in 2006 have and will mark a significant change in the administration of elections. In compliance with HAVA, states have purchased and implemented new voting systems. There is a strong shift to electronic voting, although optical scan voting is still popular. In addition, states have imposed new requirements on their voting systems, and they have implemented their own testing programs for voting systems they purchase. And, in at least 25

states, voter verified paper audit trails (VVPAT) have been required for all electronic voting. Due to the introduction of new voting systems throughout the nation, the voter's experience at the polls will be quite different in 2006 than it was in 2000. It is estimated that one in three voters will use different voting equipment to cast their ballots in 2006 than in 2004.

Voters with disabilities will likely experience the most dramatic changes. For the first time, every polling place must be equipped with voting machines that allow them to vote privately and independently. For many voters with disabilities, this may be the first time that they will cast ballots without the assistance of another person.

Voting systems do not represent the only changes in election administration that will be apparent in 2006. States have also developed statewide voter registration lists, which will provide the ability to verify voters' identity by comparing information with other state and Federal databases. This will result in cleaner voter registration lists and fewer opportunities for fraud. Another anticipated benefit of the statewide lists will be a significantly reduced need for provisional ballots, as was the case in states that had statewide voter registration lists in 2004.

This year is one of transition, which is difficult to overcome in any business; elections are no different. The introduction of new equipment will present some challenges and hurdles to overcome. For state and local governments, there are also a host of new obligations. They must receive and test a fleet of new voting equipment. Training for staff and poll workers must be organized and conducted. And, extensive education programs must be implemented to inform the public about the new voting equipment.

Although EAC cannot be on the ground in every jurisdiction to lend a hand in these tasks, we are issuing a Quick Start Guide to assist election officials as they implement new voting systems. We also encourage states to take proactive measures to test their voting systems and voter registration lists prior to the Federal elections. Such activities have proven to be an excellent tool to identify problems and solutions prior to the stresses and unpredictability of a live election.

CONCLUSION

Over the past four years, significant changes have been made to our election administration system. New voting systems have been purchased and implemented. Each state has adopted a single list of registered voters to better identify those persons who are eligible to vote. Provisional voting has been applied across all 50 states, the District of Columbia and four territories. However, one thing has not changed. Elections are a human function. There are people involved at every level of the election process, from creating the ballots, to training the poll workers, to casting the votes.

With these changes will come unexpected situations, even mistakes. We cannot anticipate in a process that involves so many people that it will work flawlessly the first time. What we can embrace, however, is that the process has been irrevocably changed for the better. There is a heightened awareness of the electoral process in the general public. There have been significant improvements to the election administration process. And, more people have the ability to vote now than ever before.

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

The CHAIRMAN. I am pleased to recognize Commissioner Hillman.

STATEMENT OF GRACIA M. HILLMAN, COMMISSIONER, ELECTION ASSISTANCE COMMISSION

Ms. HILLMAN. Thank you and good morning, Mr. Chairman.

The CHAIRMAN. Is your microphone on?

Ms. HILLMAN. Thank you.

Thank you and good morning, Mr. Chairman, and Madam Ranking Member and Mr. Ney. My name is Gracia Hillman. I have had the privilege of serving on the Election Assistance Commission since it was first appointed in December 2003. It is a pleasure to appear before you this morning.

Under section 202 of the Help America Vote Act, EAC is assigned the duty of serving as a national clearinghouse. We provide information on a number of issues concerning the administration of Federal elections. To that end, EAC has undertaken several activities to fulfill this responsibility.

We have set up the EAC Website to be a national resource. Our Website is easily accessible at www.EAC.gov. It serves as a tool for State and local election administrators, academics, advocates, practitioners, and voters in search of information about election administration.

Additionally, EAC.gov contains information about the structure, work and decisions of this Commission. Our Website will soon contain a legal resources clearinghouse. Election administrators tell us that this will be a valuable resource.

We are constructing a searchable database that will contain statutes, rules, regulations and court decisions about election administration.

As you know, Mr. Chairman, HAVA directs EAC to undertake a number of studies and to conduct research. Through this work we produce data, best practices, guidance and guidelines for use by the States and local jurisdictions.

As you might imagine, our work is guided in large part by HAVA deadlines and Federal election cycles. EAC has limited resources, but we maximize them by prioritizing our work. We also strive to provide information that will be timely to the needs of election administrators.

Our first priorities over the past 18 months have been to study topics that are most relevant to HAVA timelines. The issues we study are covered primarily in HAVA titles 2 and 3. Current study topics are covered on pages 12 and 13 of our written testimony and include the following issues: improved data collection to help quantify voter registration and turnout, catalog the types of voting systems that are being used, and illuminate the many other complex aspects of administering elections.

We are examining effective designs for ballots and polling place signage to help provide clear information for the voter. We are researching public access portals to identify effective and efficient ways for election administrators to disseminate critical information to voters, and we are compiling best practices for the recruitment and training of poll workers, including college students.

Communities throughout America depend on a volunteer poll worker to be its champion of democracy on election day. The recruitment and training of poll workers are costly and time-consuming activities, but critically important to help America vote.

EAC is fortunate to have a wealth of expertise available to help inform our research and studies. We work with the EAC board of advisors to prioritize the order of study topics. The early stages of our research are informed by working groups. These groups include State and local election officials; academics; other experts who study, follow and advocate election issues; and, of course, our Federal agency partners.

The EAC advisory and standards boards provide critical review of our documents as they are being developed, and our work is further informed by expert testimony at our meetings and hearings. Also informative are the hundreds of comments that we receive from the public.

We have a highly talented, but very small staff; therefore, we frequently use outside consultants to conduct the studies through the appropriate processes as regulated by the Federal Government. Our reports are issued in a variety of formats, including hard copy and digital.

Our Nation's election administrators also have very small budgets and staff in comparison to the enormity of their tasks and responsibilities. They simply do not have the resources to research and study their own practices and procedures. Congress wisely recognized under HAVA that information is a necessary tool for effective administration.

I will be pleased to answer your questions and provide any additional information you may need, and I now turn to Commissioner Davidson to discuss our work to improve voting systems.

The CHAIRMAN. Thank you for your testimony, and I am pleased to recognize Commissioner Davidson.

STATEMENT OF DONETTA L. DAVIDSON, COMMISSIONER, ELECTION ASSISTANCE COMMISSION

Ms. DAVIDSON. Thank you. Good morning, Mr. Chair, Ranking Member, and Congressman Ney. My name is Donetta Davidson, and it is an honor to serve as a member of the EAC. I was appointed in August of 2005.

As a former secretary of state, I can tell you firsthand how important it is to have credible guidelines when purchasing a voting system. My State, like many other States, relied on this certification program.

Serving as a TDGC member, which is the Technical Development Guidelines Committee which directs NIST in developing the Voluntary Voting System Guidelines, really was an add in my career before I became a member.

The guidelines were adopted in December of 2005. The public involvement in this was a priority to the EAC. We had 3 meetings throughout the United States, received more than 6,000 comments in a 90-day period, and NIST worked with us side by side on reviewing all of those comments.

The guidelines must always keep up with technology. The first priority was to focus on security, making sure that the voting sys-

tems are accurate and reliable. Examples include expanding the requirements of results transmitted at night after the election. We added wireless requirements, and also added VVPAT requirements for States that require it.

But that is not enough. We also took into consideration the needs of all voters and what they experienced when they used the voting system. For the first time we included a usability section in the standards which addresses the needs of the disabled community. For instance, the vendors will have to conduct a usability test. They establish a minimum font size. There is also a navigation control that allows a voter to move forward to a race or back up to a previous or past race before they cast their ballot. It increased accessibility requirements from 29 to 120.

Future iterations are being developed in conjunction with NIST. We are addressing security, obviously, in more depth, wireless technology, identifying more forms of independent verification and usability benchmarks and test protocols for the labs.

The voting system certification program is our top priority for 2006. NVLAP, which is the National Voluntary Laboratory Accreditation Program, is already performing test lab evaluations. Our program will be rigorous, thorough, and it will be transparent to the public. The quality control will be added that has never been there in place before. Field monitoring, and also the vendors will have to register.

The Nation is looking to us for leadership, and we will provide it. I thank you very much, and I would be more than welcome to answer any questions you may have. And now I would like to turn it over to our Vice Chairman Mr. Martinez.

The CHAIRMAN. Thank you for your comments. I will recognize Mr. Martinez.

STATEMENT OF RAY MARTINEZ, III, VICE CHAIRMAN, ELECTION ASSISTANCE COMMISSION

Mr. MARTINEZ. Good morning, Mr. Chairman, Ranking Member Millender-McDonald, and members of this committee. I am Ray Martinez. I currently serve as Vice Chair of the EAC.

Let me briefly address two additional areas where the EAC has made significant progress in implementing HAVA. First is through the issuance of voluntary guidance. As you know, HAVA contains several technology and administration requirements that must be implemented by every State. These requirements include, among other things, voting system standards for all touch-screen and optical-scan voting systems, a requirement for at least one accessible voting system per polling place which would allow persons with disabilities the opportunity to vote privately and independently, the implementation of provisional voting, and development of statewide voter registration bases. Where any ambiguity exists, the EAC is mandated to issue voluntary guidance to assist States in meeting these important requirements.

The EAC has met this responsibility, Mr. Chairman, in the following ways. In July 2005, the EAC issued its first set of voluntary guidance to assist States in developing their statewide voter registration databases. This important requirement, designed by Congress with the dual goal of improving accuracy of voting lists while

also reducing the possibility of fraud, has been a particularly difficult requirement for many States to implement.

Some States such as Michigan and Kentucky have served as national models for such a system, and yet most States had no such database in place when HAVA was passed. So the EAC has worked diligently by seeking broad public input to provide interpretative guidance as well as technical assistance through an ongoing partnership with the National Academy of Science.

Additionally, the EAC has issued other voluntarily interpretative opinions to assist States in meeting their obligations, including opinions on the use of lever machines, matters involving the conditioning of provisional ballots to voter identification requirements, and an important analysis regarding the differences between the voluntary voting system standards promulgated by the FEC in early 2002 and the standards that are mandated by the plain language of HAVA.

Second is our efforts to assist States. While HAVA requires the distribution of unprecedented Federal funds to all States, these funds are to be used not only to improve voting system technology, but also to broadly address the people aspect of election administration.

In order to facilitate this, the EAC is developing voluntary management guidelines referred to earlier by our Chairman which will offer a vast array of information and best practices dealing with nearly every phase of election administration, including poll worker training and voter education; protocols on security of electronic voting systems; and prudent practices for procurement, setup and storage of voting systems.

Finally, since HAVA represents both an unprecedented and significant financial commitment by Congress to improve the administration of Federal elections, it is imperative that the EAC conduct its due diligence in assisting States to use these important new Federal funds for their intended purposes.

We are doing so by working on a daily basis with State and local jurisdictions to answer their numerous questions on the use of HAVA funds, and, when necessary, issuing advisories to inform all jurisdictions of our decisions.

Additionally, the EAC staff has traveled extensively to various conferences throughout the country to conduct training and information sessions in order to directly inform election administrators and answer their questions.

Moreover, now that all appropriate HAVA funds have been fully distributed by the EAC, we have implemented an audit program through the establishment of an Office of Inspector General at the EAC. Since the establishment of this office, Mr. Chairman, the EAC's inspector general has moved assertively to begin regular oversight activities based upon objective criteria such as the expenditure of HAVA funds.

Additionally, when allegations were raised in 2004 about the possible inappropriate use and mismanagement of HAVA funds by now a former secretary of state, the EAC initiated a special audit that has resulted in a determination of repayment of some $3 million.

Clearly we have come a long way in a short period of time. As the process of election administration becomes more complex and thus more challenging upon State and local administrators, election administrators, it is all the more imperative that the EAC diligently stick to the important task it was assigned in HAVA.

We are doing just that, Mr. Chairman, and, in my view, with each passing month and year, the EAC is becoming an important and an increasingly valued partner in the process of election administration.

With that, I know that we are all prepared to answer your specific questions, Mr. Chairman. Thank you.

The CHAIRMAN. I thank all the Commissioners for their excellent testimony. It is a very good overview, and we appreciate that.

I will begin the questioning. First of all, I would like to, since I am the one who was involved in writing the technical part of it, and I happen to be a scientist—I am very interested, Commissioner Davidson, you mentioned the work with NIST. I assume NIST was very cooperative in this; is that correct? Were they helpful?

Ms. DAVIDSON. Absolutely, Mr. Chairman. They were very helpful and continue to be very helpful in our new process. Even in the certification of our voting labs that we are going to have, they have been very helpful in that.

The CHAIRMAN. Can you explain, with the certification process that has been set up—and I agree with you, it has been a good one. We just read in the papers last week about Diebold having a great vulnerability, and I knew there would be vulnerabilities. That is not a crime to have a vulnerability. But to have such an obvious and simple one was surprising. Did that sneak through, or was that particular model certified at this point?

Ms. DAVIDSON. The equipment was certified in the past by NASED. Our program, we feel, will be far more vigorous. Whether something like that would have been caught, I am not certain, to be really honest with you, and that is very important to me.

One of the things we must remember, when that was found, the individual was let into the office, and they had access to the software and everything to be able to do that. It wasn't somebody from the outside being able to go in, so it is a little bit different.

There has got to be security from the front end of the system all the way through. The systems need to be secure, but operation for the counties and what they do within their election setup and the whole process must be secure as well.

The CHAIRMAN. Let me ask also about the human factors, which I pushed very hard to have that included as part of the requirements. Are you satisfied that the human factors were dealt with appropriately? Let me just explain my concern.

For years I have heard that we just have to train the poll workers better, or we just have to train the voters better, and I have always said that is just utter nonsense. This is a task that they do, in the case of the voters, a couple times a year; in the case of the poll workers, maybe four times a year. You can't expect people to remember that much from one session to the other.

I felt the equipment and the procedures should all be designed in such a way to take account of that and take care of all the

human factors so no one has to be trained. It is so elementary that anyone can do it without error.

Has that goal been achieved at all in this whole certification process and the design and testing and so forth?

Ms. DAVIDSON. It is being worked on. We increased it from 29 to 120. We feel like we have made a very good start at that. But right now what they have done to meet the VVPAT, for instance, they have attached that paper printer on the side of the equipment, and that is not usable to the judges. I will be very honest with you, the judges are having issues with that and having trouble being able to get it attached and working properly. That is one of the issues that we really see. So in our next iteration that will be one area that we are really looking into. We improved human factors, but not enough.

The CHAIRMAN. Okay. I am pleased to hear your comment, because that was my impression. If you are saying everything was okay, I would be worried.

Ms. DAVIDSON. It is not okay.

The CHAIRMAN. Thank you for your honesty in that.

Similarly, the question of fraud. It has amazed me since I got to the Congress and came to this Committee and have dealt with contested case elections and also the elections across the country, what has amazed me is both the extent of fraud, and, second, the opportunities that are available for fraud.

Do you think that through this whole certification process, the whole complete review you have done, that we have minimized—I know we can't eliminate it at this point, but have we minimized fraud opportunities? Anyone may answer that.

Mr. DEGREGORIO. Mr. Chairman, I think that the implementation of the statewide voter registration database from the part of giving people opportunities for fraud will be helpful to eliminate duplicate names and opportunities that people have had to commit fraud.

There are certain other areas that I think will be helpful that the States have taken themselves to require other requirements, and also in their own way that they look at this whole process to make sure that not just the voter registration process is one that is secure, but that the voting devices can't be tampered with.

In the voting system itself, when you take it as a whole, there are different opportunities where people can come in and commit some kind of fraud against the system, but I think it is a process that has to be looked at in total, and I think there are steps being taken, but clearly there is more work to be done.

The CHAIRMAN. Commissioner Hillman.

Ms. HILLMAN. I would just add that the issue of voter fraud and voter intimidation are among the items that Congress has asked the Election Assistance Commission to look into, and we have begun that. One of the first tasks is to arrive at a common understanding and definition when people talk about voter fraud. There is manipulation of equipment, which may not be something that the voters have access to. There is the issue of perhaps registering to vote if one is not qualified to do so.

There aren't a lot of reports that quantify this, even when you look at the instances of situations that have been reported by elec-

tion administrators to prosecuting officials. Officials believe it is very difficult to prosecute.

So we will be wrapping our arms around this to try to identify the points where there are weaknesses, look at the things that HAVA already provides to take care of those, then look at things that may need to be done.

The CHAIRMAN. Any other comments?

Mr. MARTINEZ. Mr. Chairman, if I could. I would echo, obviously, the things that my colleagues have put forth, but I would also say that HAVA represents that delicate balance of trying to achieve the twin goals of both minimizing fraud, Mr. Chairman, and also improving access to the polls.

I think the broad-brush answer, if you will, to your important question is that as we diligently make efforts as we have outlined to implement the important provisions of HAVA, all the requirements, bells and whistles for voting systems, voter information requirements, statewide databases, and the voter ID requirements, all of that was delicately crafted by Congressman Ney and his colleagues, who are indeed regarded as the authors of HAVA, and it was delicately balanced with the twin goals in mind.

I think as we stick to the implementation of this law, we are going to achieve, I hope, that particular goal.

The CHAIRMAN. My time has expired. Let me just say one area I am still very worried about because of the lack of expertise of average Americans in dealing with computers, it is remarkably easy to hack into a computer and change things. I still want to keep an eye on the safeguards that are being developed to prevent that from happening.

My time has expired. I am pleased to recognize the Ranking Member, the gentlelady from California, for her questions.

Ms. MILLENDER-MCDONALD. Thank you so much, Mr. Chairman. Let me echo the visionary eye and tenacity of Mr. Ney and Mr. Hoyer in bringing about HAVA. It is just an incredible piece of legislation. We have been able to build on it and improve upon it, so we are so grateful to have you here this morning and the work that the two of you have done in bringing about HAVA.

This outstanding panel today, as I agree with you, Mr. Chairman, is superb in their testimony, and you are not just valuable, you are invaluable. You have said some things that are really just more encouraging than what has been said in the past, and you have brought in some concepts that I just want you to elaborate on.

First, Mr. Chairman, you talked about the eight States that had primaries this past Tuesday, and, of course, California was one of those. I was quite concerned about the voter turnout, it was so dismal, and while there are some things you can't do—but I was wondering if you have thought about anything that we can do to improve upon voter participation and voter turnout.

You also spoke about States that are in compliance with the building of the statewide database and registered lists. Can you tell me those States that are not in compliance at this point?

Mr. DEGREGORIO. Thank you, Congresswoman Millender-McDonald.

First of all, on the turnout, I have been in the election administration business for 20 years. I served as Director of Elections in

St. Louis County, Missouri, for 8 years where we had municipal elections, and the turnout was 15 to 20 percent on average, and that is a dismal participation rate. I know that in the State of California, in your election you had Tuesday, I spoke with Connie McCormack yesterday, and she lamented the fact that the turnout was so low.

I think from the EAC's viewpoint we certainly have always talked about encouraging Americans to participate in the election process, and what we do every day is to make sure that voters have trust and confidence in the election process, so that is not a barrier or reason for them not to participate.

Election turnouts depend many times on competition of the political parties and the candidates involved, but we try to do what we can, and certainly we talk to election officials around the country to encourage voter education and other methods to encourage voters to participate.

It is a continuing problem in the country. We recognize that.

I am sorry, your other question?

Ms. MILLENDER-MCDONALD. Any States that are not in compliance?

Mr. DEGREGORIO. First of all, let me just state for the record that the Department of Justice has jurisdiction to sue States or to bring them in compliance through legal action. With that said, as you indicated, most States are in compliance with statewide databases. We recognize that there are some States that are not. New York State was sued by the Department of Justice recently because they were not in compliance. We know other States are working very hard to become compliment. Illinois, for one, is not there yet, but will be, they indicate, by the November election.

This has been a difficult process for many States that waited to get this done, but we recognize that it is an important process, and we have provided guidance and guidelines to those States to help them get that process completed.

Ms. MILLENDER-MCDONALD. Excellent. The Chairman has already, I think, exhausted the information about the voter certification program, but that is another good concept and good provision that you spoke about this morning.

Ms. Hillman, you spoke about something that is very dear to me. First of all, I think the Website, I think, is an incredibly good component to have, but within that construct you talked about bringing in this legal concept, and that is very good because when we were in Ohio, it seemed at the last minute they trumped Federal law to come in with some State law that just really did a topsy-turvy to some of the outcomes.

Can you expound on your legal—the legal provisions there and how that will help us in bringing best practices for the public to access through the Website?

Ms. HILLMAN. Certainly. Specifically on the legal resources clearinghouse, election officials across the country have told us that it requires a lot of time, and they don't have the research staff or sometimes even the size legal staff to look into the many issues they need to research before coming up with a recommendation on taking action. And so it is our intent to provide one-stop shopping, if you will, and it will include Federal and State court decisions so

that people can then go and search a particular topic to see what decisions have already been rendered.

If I might just take a moment on your voter turnout question, there are things within the Help America Vote Act that the Election Assistance Commission will look into with respect to innovative ideas to see would it make a difference if voting were on a different day other than the Tuesday date that has been selected; would weekend voting matter. Some States are looking at early voting, does early voting help, because people are sort of caught between not being able to get to a particular place within particular hours to vote.

So there are some things that are going in the country to try to identify real barriers to participation.

Ms. MILLENDER-MCDONALD. That is excellent. While I see the light on, some of those other things that you all have mentioned—and welcome, Ms. Davidson, to the Commission. You are such an asset to us on this Commission. You and Mr. Martinez talked about voluntary guidance. I think that is just so extremely critical and very important.

You talked about quality control. Those are great things that we put in place, that you are putting in place, that I think will only be a further asset in improving upon what you have already started.

And then the audit program and the inspector general, I can't say enough, as I look at this red light before me here, but those are great innovative provisions and concepts that you have brought to bear that, to me, helps to improve HAVA and helps to improve, or helped to improve, voter participation, oversight, just all of those things that are so critical in providing the type of program and the type of voter participation that we want.

So those are but a few things that I have heard that I am just very encouraged by and further will talk to you on my next round of questions.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentlewoman's time has expired.

We recognize the gentleman from Ohio, Mr. Ney.

Mr. NEY. Thank you, Mr. Chairman.

Whoever wants to answer these, not necessarily looking for an answer from each Commissioner, but I want to know what is the fiscal year 2007 request for financial and human resources?

Mr. DEGREGORIO. I believe it is $17.1 million, of which I think our request was more than that, but recently the House Appropriations Committee just approved $17.1 million for our 2007 fiscal year.

Mr. NEY. Approps committee marked that up then?

Mr. DEGREGORIO. Yes, they did.

Mr. NEY. What do you need to successfully complete the mission that you have got within the legislation?

Mr. DEGREGORIO. Our request and the approval includes a $2.2 million increase that will go to NIST. Right now in each of our fiscal years, the last 2 fiscal years, we have given $2.8 million to NIST to work on voluntary voting system guidelines. With the advent of our certification program and the next generation of these guidelines, we felt it was necessary to really focus on this tech-

nology and on the certification program because people are looking to us, we recognize, particularly the States are looking to us in the certification process to really make sure that it is transparent, make sure that it is a process that people can have confidence in. So, Mr. Ney, we are investing that for the next fiscal year.

Ms. DAVIDSON. Could I add something? I would like to add that one thing that we have just realized, and I don't know if I really should be bringing it up here or not, but it really surprised me from State government to Federal Government, I guess, I am in the learning process, but I realize that in our cap of 23 employees, that our college interns fall underneath that cap, and then also the other item that falls under it is personal services that we contract with, and so that has put a restraint on us. When you were asking what do we need, that to me would be some help; if there were some way or another to say FTE means full-time, and our full-time people would only fit into that 23. That would be a great deal of help, something in that area.

Mr. NEY. Also really the interns shouldn't count in that because the other point I think you probably encounter, as we do here, interns come from different educational backgrounds, they add something because they have usually interest in wherever they are working, so that counts against you then, the interns do.

Ms. DAVIDSON. That is correct.

Mr. NEY. Otherwise you would have to not have any interns, which is not good for the system, not good for the people trying to do that.

Ms. DAVIDSON. Surprising how those interns have gotten involved with elections and how much they want to give to the process in the future. They really have gotten involved in it.

Mr. NEY. Where was that cap put on at?

Mr. DEGREGORIO. I believe it was put on in the appropriations of the last 2 fiscal years. It went to 23 from 19 from the year before, but it is put on in the appropriations process.

Mr. NEY. Thank you.

Ms. HILLMAN. Mr. Ney, if I could add a footnote on that and appreciate your interest. The EAC staff has been working with the staff of the Appropriations Committee to clarify what the intent was; did it mean 23 full-time permanent employees, or did it really mean the government definition of full-time equivalent? That is sort of the key to the dilemma.

Mr. NEY. Thank you.

Any comments on military voting? We went over and over this in the conference committee, and when we put the bill through, and then the Defense Department came forth and said we will have this test program, and that all fell apart. There has been some other ideas, I guess. Any comments on how you have been dealing with military voting?

Mr. DEGREGORIO. Mr. Ney, we issued a report earlier this year on military and overseas voters, and the report indicated that election officials across the country are not collecting the data that is required under HAVA. They are supposed to tell us how many ballots have been sent to military and overseas voters and how many come back, but we are not getting that data. We feel that in 2006 we will.

We are doing a study this year and looking at a pilot project in several places throughout the country that will be sending ballots electronically using the Internet to voters overseas who will return them by Postal Service or physical means, but at least one part of the equation will be using the Internet to send ballots. We think that will help our military men and women and overseas voters get their ballots back sooner.

The CHAIRMAN. The gentleman's time has expired.

I am pleased to recognize the gentleman from Florida, Mr. Mica

Mr. MICA. A couple of quick questions. How much does all this cost? What is your total budget?

Mr. DEGREGORIO. Our total budget request for 2007, fiscal year 2007, is $17 million. Right now our appropriation is just under $15 million for fiscal year 2006. So it is not a large budget, sir.

Mr. MICA. Fifteen million. How many people do you employ?

Mr. DEGREGORIO. He we have a cap of 23 FTEs right now.

Mr. MICA. How much is spent for salaries, and how much is expended otherwise? What is your personnel budget? Twenty-three FTEs.

Mr. DEGREGORIO. Right. Our personnel costs run around $3 million; less than $3 million. Most of our funding is going—2.8 million is going to NIST. We also have research projects—

Mr. MICA. How much on research projects?

Mr. DEGREGORIO. We spend approximately $2.3 million in research in fiscal year 2006.

Mr. MICA. How do you decide who gets those? Competitive?

Mr. DEGREGORIO. They are competitive bids, sir.

Mr. MICA. Do you have a sunset provision? Do you have to come back every time for funding?

Mr. DEGREGORIO. We come back every year for funding to the Appropriations Committee.

Mr. MICA. They don't exist forever. It is just an annual authorization, or do they have an authorization?

I want to figure out how we can get rid of you.

The CHAIRMAN. Both good news and bad news. Basically, the authorization will expire, but just as with the FEC, it will continue with appropriations, and the Appropriations Committee will each year authorize for one year.

Mr. MICA. They probably do some good things, but we have to look at areas where we can eliminate programs that may not be that useful.

I have some concerns about noncitizen voting. I understand when Arizona passed a resolution that required citizens to produce proof of citizenship prior to registering to vote, when the Secretary of State requested reference to this requirement in instructions that accompany the Federal registration form, she was advised by your group that such a requirement would conflict with the National Voter Registration Act. Is that correct, and do we need to change the law?

One of the most important things is making certain that people—that the voting process and integrity of the voting process is maintained, and also that the people who are voting are actually people who they say they are.

Who wants to shoot?

Mr. MARTINEZ. I am happy to jump in. I am Ray Martinez, Vice Chair.

You are correct, Arizona did ask for a change to the State's specific instructions on the national voter registration mail-in form. Our agency issued a letter to the State of Arizona probably a couple of months ago, and what we did is to consider the plain language of the National Voter Registration Act as passed by Congress back in 1993, which mandates very clearly, Congressman, that the national mail-in voter registration form has to be both used and accepted by every State in the country.

So we looked first to the plain language of the statute and tried to make an informed determination as to Arizona's request. Where there was any ambiguity, we also looked to legislative history. And in looking at that history of the National Voter Registration Act, there also happened to have been back in 1993 when it was being passed by Congress a specific provision which would have allowed States to request documentary proof of citizenship at the point of registration. That particular amendment was stripped by the conference committee that put forth the final version of the National Voter Registration Act.

Mr. MICA. So it is your opinion you would need to amend the National Voter Registration Act, I guess.

Mr. MARTINEZ. Our opinion is through the regulatory process we don't have the authority to grant Arizona's request; certainly the United States Congress does.

Mr. MICA. Do you have any other way to suggest that we keep noncitizens from voting?

Mr. MARTINEZ. Obviously HAVA required, for example, a citizenship box to be placed in the national voter registration form. That was done by the FEC prior to the creation of this Commission. So there is now an explicit question on the registration form that says, are you a citizen.

NVRA back in 1993 increased the penalties, Congressman, for providing false information and made stricter penalties for those who provide such false information. So I think we have to continue to look for ways——

Mr. MICA. Finally, would your Commission recommend to us that we amend the NVRA so that we can make certain that presentation of proof of citizenship is required?

Mr. MARTINEZ. I think that our Commission——

Mr. MICA. Are you all here?

Mr. MARTINEZ. Yes, sir, we are all here.

Mr. MICA. Let us have a vote. How many in favor?

Ms. DAVIDSON. I would like to add something, if it would be okay.

Mr. MICA. Go ahead. My time is up, I think, but you go ahead.

Ms. DAVIDSON. The one thing I think that we have noticed in our research is that in comparing our list, HAVA asked us to compare lists with the driver's license, but you can get a driver's license in many, many States and don't have to be a citizen. Also, when we tried to compare our list to the INS, we are not able to get ahold of that list.

So that is one of the areas if you are looking at changing laws, that we look at that type of list, it would be very helpful, I would think.

Mr. MICA. How about the vote? How do you all feel? Ready to vote to ask us to change the law?

Ms. DAVIDSON. I can tell you what we did in the past in Colorado. That is only one person. We act as a board, and we have not taken steps to tell people in any area how we feel, but I can tell you——

Mr. MICA. I mean, the opinion of the board, should we change the law?

Mr. MARTINEZ. Congressman, I think that we have an obligation to look at every means and the least onerous means to be able to achieve the laudable objectives that certainly are trying to be achieved by the good people of Arizona. I cannot give you an opinion right now as to whether amending NVRA to allow this is the least onerous means to achieve citizenship verification, but speaking for myself, I will be happy to continue to look at this.

Ms. MILLENDER-MCDONALD. Will the gentleman yield?

The CHAIRMAN. The gentleman's time has expired. Let me just insert that we are investigating the legislative possibilities on this matter.

Mr. MICA. I would love to hear their opinion.

Ms. MILLENDER-MCDONALD. They can only recommend, Mr. MICA.

Mr. MICA. I know.

The CHAIRMAN. The Chair is pleased to recognize the gentlewoman from Michigan, Mrs. Miller.

Mrs. MILLER. Thank you, Mr. Chairman.

I am sorry I was a little late. I didn't hear all your testimony. I was at another committee where they were marking up some legislation.

I want to welcome you all to the committee. I have had a chance to talk to each of you, and particularly my former colleague Mrs. Davidson from Colorado, both of us former secretaries of state.

I might pick up a little bit on what Representative Mica was talking about because it has been interesting following this issue in Arizona about citizenship, et cetera, and one of you commented about States that can give driver's licenses out to known illegal aliens.

In Michigan, unfortunately, we are one of those States. There are actually 10 States in the Nation that continue to do that, give out driver's licenses to known illegal aliens.

The reason I am bringing that up is because we have subsequently passed, the Federal Government has passed, now a piece of legislation called the Real ID Act, which will no longer allow States to do that. They have about a 3-year window to stop doing that.

However, in Michigan, and sort of a roundabout way, I am not sure if you are familiar with this piece of legislation or you have any comment, we have a piece of legislation in our statehouse which would require a person's citizenship be disclosed on his or her driver's license.

It all sort of falls into this Real ID Act, and our qualified voter file in Michigan is peopled off of our driver file, which is why I think there is a little bit of a hook here as well.

Also, because in 2008, anybody crossing either border, the southern or northern border of our Nation, will be required to have a passport or some further documentation, more than your driver's license, to be able to cross. Do you have any comment—I don't know if you are familiar with that legislation in Michigan. What is happening in Arizona is not inherent to there, it is illegal immigration, and, whether or not on the driver's licenses or what have you, is happening all across the Nation. Perhaps I can ask for some comment on that.

Mr. MARTINEZ. I am happy to do so, Congresswoman. I am familiar with the legislation you are talking about, and I think one important nuance to put forth is it is just not the dilemma of distinguishing between illegal and legal individuals in this country, it is the nuance also of those hundreds of thousands or perhaps millions of individuals who are legally here in the country but not citizens.

Right now HAVA requires that the Social Security Administration enter into a compact with all 50 States to verify the last four digits of that Social Security number that has been submitted in some cases by a registrant voter application. The problem is the database that the Social Security Administration has does not necessarily distinguish between those individuals here as legal residents under a work visa or something similar and those who are citizens. That is a different database that exists with what used to be called the INS, and I think it is called ICE now or something like that.

So there are structural barriers for us to try to achieve, again, the laudable goals that Congressman Mica was talking about and that clearly some States in the country like Arizona are trying to achieve. I think it is incumbent upon us to look to overcome those barriers.

Mrs. MILLER. There are these various databases, and there has to be interoperability as we proceed with some of these things.

I might also—maybe not so much a question as a comment, and I appreciate Representative Ney bringing this up earlier about some of the problems that you have run into with FTEs and having your interns and consultants, et cetera, all being grouped into the same barrel there, which is a little bit odd. Never did happen in State government; it is only here under the Dome that some of these things happen.

I would respectfully suggest that perhaps this committee might want to write a letter to the appropriators expressing our consternation about that as a way to be a conduit that we have looked at it, had a hearing on it, and would ask them to take all these things into consideration as they proceed with that.

A question I would have as well, and again I am sorry I was late, but with good staff work, Mr. Martinez mentioned Michigan was a national model in implementing HAVA. When I was the secretary of state there, we started this qualified voter file, is what we use in our nomenclature, and it was an interesting challenge because Michigan is somewhat unique in the Nation. Where normally it is the county clerk that has the voter registration list, in Michigan,

as Chairman Ehlers knows, we have a very decentralized type of system. So it is every village clerk, city clerk, township clerk in the entire State, to the extent we had about 1,800 various voter registration files. Some were quite sophisticated, and some were kept literally in somebody's cigar box under their desk.

Putting all of those into a computerized statewide database was part of an experience. It has worked out particularly well because I think we were able to actually eliminate as we sort of melded everything together about 600,000 names off of our file there, and I know other States are having similar kinds of experiences as they are doing this.

I would say this. Our State is now hopefully successfully migrating to uniformity amongst election equipment, and all the other States are struggling with all that. A critical component of the partnership is with the vendors and the type of vendors out in the marketplace today and with the clerks and the people in the election industry are dealing with. I would say it is probably fair to say that this election year we are going to see more election equipment deployed, actually just deployed, than we have ever seen before, and that is a challenge for those involved in the elections industry.

I think, as I have talked to a number of election officials in my district or around the Nation here, they are very concerned with the ability of voting system vendors to provide the types of support services that they are looking for.

I would ask what EAC is doing to sort of bring this issue to light, sort of put the vendors on notice that everything is not going to be laid on the shoulders of the clerks, et cetera, if you have a vendor who is not providing adequate support service? I wonder if you have any comment in that area.

Mr. DEGREGORIO. Thank you. Thank you for that.

First, let me say Michigan was the leader in creating a statewide database, and I think the model for HAVA. I just want you to know that Chris Thomas from your State is now the chair of our advisory board.

Mrs. MILLER. Good choice.

Mr. DEGREGORIO. But you are right, there have been problems, and we have certainly received correspondence from several State officials throughout the nation expressing their concern with vendors and their ability to serve and to fulfill contracts. Recognizing the relationships between vendors and the States or local governments, it is difficult for the EAC to get involved in their contractual relationships. However, at the same time, we recognize that this is a problem that we need to make sure we understand and try to do what we can to solve it. So we have had discussions with vendors about this topic.

I have visited six States this year to observe the transition to new equipment and seen the vendors and their work; but, it is a concern for all of us because we recognize that while primaries are held week to week to week, on November 7th the whole country is going to be dealing with an election, and these vendors may be spread thin, and we really don't want that to happen. So we are looking at this.

Mrs. MILLER. I know my time is up. I might respectfully suggest you might want to think about having hearings or something so

you have a paper trail to put these vendors on notice that we are looking for them to provide the adequate support services for their products. It is a very important part of it all.

The CHAIRMAN. The gentlewoman's time has expired, and I appreciate your suggestion about taking care of the intern problem. We will follow through on that.

We will start a second round of questions. We are expecting votes soon. If it is just one vote, we will try to continue afterwards if there are still questions. If it is multiple votes, we may have to end at that point.

By the way, just in terms of your budget, your questions on how large was your budget, I did a quick calculation and realize that your budget comes to 8 cents per eligible voter in this country. I think that puts it in perspective.

Starting the second round of questions, according to a recent electionline.org report on the progress of election reform, as of January 1, 2006, nearly half the states had missed one or more of HAVA's deadlines. Do you agree with this assessment, and are more states coming into compliance as their primary elections approach? In other words, how are we doing in getting everyone in line, in total compliance?

Mr. DEGREGORIO. Thank you, Mr. Chairman. That electionline.org survey which we did take a look at was a snapshot taken in January 2006. Certainly now that we sit here on June 8th with many primaries behind us, we have seen significant progress made throughout the country to comply with the Help America Vote Act. Certainly some States have been challenged in particular rural areas to find polling places accessible to people with disabilities. States have been challenged because they received equipment late. We have seen that happen throughout the country.

I think if you take Pennsylvania as an example, it was put in a very difficult position because they were late in buying equipment. They had their primary election May 16th, and it came off relatively well. There were doomsday predictions, but it didn't happen because election officials are working very hard to come in compliance with HAVA.

We anticipate that by November most of the country will be in compliance. Certainly there will be States like New York who won't be, and there will be scattered counties who may not have changed from the punch card and lever machines and accepted money from the EAC to do so. We will have to deal with that.

But I think we are moving in the right direction, and by November, a great chunk of the country will be in compliance with HAVA.

The CHAIRMAN. That is very comforting.

What HAVA requirements are the states having the most trouble in meeting, and how are you assisting them in meeting those?

Mr. DEGREGORIO. Well, I think it is a range of issues. One of them is the HAVA requirement to transition to new equipment and serve people with disabilities by requiring specific types of equipment at the polls, whether it is a touch-screen system or another system. And training poll workers to work with electronic machines where they haven't done so before is a great challenge to election officials around the country, and certainly that has been a major

point of problems for people in local election jurisdictions throughout the country.

I am going to ask my colleagues if they want to share some of the observations they have had.

The CHAIRMAN. Anyone wish to comment?

Commissioner Davidson.

Ms. DAVIDSON. Thank you, Mr. Chair.

One of the biggest areas that some of the States have had trouble with is the voter registration file, bringing it in to the secretary of states or the election directors' office statewide. They may have contracted with vendors, and the vendors didn't produce it the way they felt like they should. They have gotten their money back, but they are starting over.

So they have been working with the Justice Department to come to the agreement of what they can do, like verifying their files against the four digits with Social Security and things like that to put them in compliance until they get their system up. Even a lot of them feel they will have that up by the November election.

Mr. MARTINEZ. One quick comment, if I could, Mr. Chairman. The technology requirements in title 3 of HAVA have been met with more challenges by the jurisdictions. The bells and whistles require the voting systems, the statewide databases, those required expertise that perhaps chief election officials like the 38 secretary of states around the country perhaps didn't have that technical expertise to build these databases. They have it now. They are making diligent efforts to do so.

It is also true that some of the important requirements like provisional voting, you have had compliance by States across the board, and, in fact, at least 16 States in this country prior to the passage of HAVA had no form of failsafe voting prior to HAVA being passed. Now all States have some form of provisional voting, and it has ensured that over a million voters in the 2004 election cycle did not get disenfranchised. I think there are diligent efforts being made by our State and local partners.

The CHAIRMAN. Thank you.

One last quick question. There is a lot of support out there for a voter-verified paper audit trail as it is called, and we have a bill introduced in the Congress to require that. What is your opinion of that? Is that the best way to ensure that we can have a complete, accurate audit, or have you conjured up or thought of some other approaches that we might take to deal with that question?

Mr. DEGREGORIO. Mr. Chairman, the EAC hasn't taken a position on the VVPAT per se. We have provided in our Voluntary Voting System Guidelines, for the use of the VVPAT, which is now mandated in 26 of the States across the nation. Just 3 years ago there were no States with VVPAT; and 2 years ago it was just the State of Nevada.

So, there has been a dramatic change. I think it is the whole issue of independent verification of the voting process and of the balloting which one takes a look at. We set up procedures in our Voluntary Voting System Guidelines, and in the management guidelines we will issue this summer, to show election officials how they can secure a voting system from beginning to end, in which people can have trust and confidence.

Some States have decided to have the voter-verified paper audit trail as part of that component to trust the system that way. Other States have chosen not to because they feel comfortable in the system that is set up because there is an audit requirement under HAVA. These electronic machines, even those that are not required to have a VVPAT, are required to produce audit trails of what is inside the machine so that every ballot that is cast can be audited. So they can be trustworthy in the system, whether they have VVPAT or not, and we haven't taken a position to advocate for that nationwide.

The CHAIRMAN. I would be interested in receiving the information you have about the alternatives to VVPAT.

Commissioner Davidson.

Ms. DAVIDSON. Also, the National Institute of Standards and Technology is working on this. This is one of the things they are looking at. As that comes forth and they give more recommendations, we will make sure you get that information.

The CHAIRMAN. That is very helpful.

My time has expired.

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

I concur with my colleague in sending this letter to the appropriators with reference to FTEs and getting that straightened out. So thank you for that.

I would also like to say that the issue that came up with my colleague Mr. Mica on the Arizona dispute, I want to remind us that this Commission is not a legislative body. It is incumbent upon us to try to see what we can do, Mr. Chairman, in terms of legislation or trying to see if we can alleviate or address that issue from the legislative body here. It is not theirs to do. I don't think votes by them or anything else should be requested.

On the military issue that we talked about and the lack of getting follow-through information and getting those—the database or the information back is something that is extremely important, given our military folks overseas in different places.

Mr. Chairman, perhaps a hearing would be in place to bring forth our military folks who are responsible for that to see just why is it that we are not adhering to their participation in elections and getting this information back in a timely manner.

I would certainly like to recommend, if you will, Mr. Chairman, that we look into a hearing on the military voting process.

We do recognize that there are some issues with underfunding the last of the required HAVA payment in December of 2005, and the States are still struggling to meet the HAVA requirements because the law has been underfunded by nearly $1 billion. Can you tell me some of the issues States are facing because of this shortfall?

Mr. DEGREGORIO. I can address a few.

Ms. MILLENDER-MCDONALD. Mr. Chairman.

Mr. DEGREGORIO. I can address a few.

Ms. MILLENDER-MCDONALD. Many chairmen in this room.

Mr. DEGREGORIO. It has been difficult. This has been a process where the Federal Government took a big step when it appropriated $3.1 billion, and the States under HAVA were required to make a 5 percent match, and they have done so. We have seen in

many States, including your State of California, Madam Ranking Member, the passage of a bond issue to provide funds at the local level. So that has all been helpful.

But across the country it has been difficult for many jurisdictions, particularly small jurisdictions throughout the country that have had the challenge of a one- or two-person office in dealing with technology and IT and equipment that they have never been used to, so they have had to put up some money.

We recognize that technology is ever changing, and particularly with electronic voting that has been introduced in a major way in the country in the past 5 years, that there are going to be software and hardware changes, and improvements. As the Chairman mentioned, the human factor portion of voting, and making it easier to use this equipment are some examples.

There is going to be an increase in demand and need for funds to change the equipment, to improve the equipment. We know that is probably coming sooner rather than later in the country, and you are going to hear about it probably from election officials within the next few years.

Ms. MILLENDER-MCDONALD. That is exactly right, and there is ongoing changes in technology and IT, and there is a critical need, Mr. Chairman, for us to look at this again and to try to see what we can do to remedy that.

When Mr. Mica asked about the budget for you, we are reminded that you were authorized for 3 years to try to implement HAVA, and because the President has the last word in authorizing or presenting a budget for you to continue, then you can really go into perpetuity, and I think it would be wise for this President to do that because of the effective way you have brought about the improvements.

Mr. DEGREGORIO. Madam Ranking Member, we have been pleased by the administration's support of the EAC. They have actually requested more funds than the Congress has appropriated for our operations budget. So, they have been very supportive over the last 3 years of the EAC and our funding.

Ms. MILLENDER-MCDONALD. Given there are so many different election laws and, of course, the civil rights law, and the voting rights reauthorization law is upon us now, are you working with other agencies to ensure enforcement of these laws? How do you connect with NVRA and civil rights and the Disabilities Act and others?

Any one of you can answer that.

Mr. DEGREGORIO. We have ongoing discussions with the Department of Justice about every element of the Help America Vote Act, recognizing their important role in enforcement, but also recognizing that it is important for us to have discussions.

We receive information, we have hearings, we have meetings where we hear from various groups about problems and difficulties they are having and about noncompliance with HAVA, the Voting Rights Act, or our elements of Federal laws that deal with elections. So, it is a partnership with them. We work closely with them to have discussions, but they are the enforcers of the Voting Rights Act.

Ms. MILLENDER-MCDONALD. But the connectivity is there, and you have those ongoing discussions. Of course, if you are out there trying to improve upon voter participation and all of that, then you certainly want to be consulted by how these would either impede or expand your participation.

Mr. Chairman, thank you so much.

The CHAIRMAN. The gentlewoman's time has expired.

The gentleman from Ohio.

Mr. NEY. Thank you, Mr. Chairman. I just wanted to follow up on something I think the Chairman said; e-mails of the ballots. The staff of the committee, bipartisan, Republican and Democrat, talked to ex-pats in Lebanon and Istanbul, and we met with the ex-pat groups. And I think it is the State of Virginia, I could be wrong, but one of them e-mails over to you when you are overseas, and you print that out, and then you can mail it back.

I don't know how we promote that for the whole country to do, but it is fantastic because the ex-patriots are overseas, and it is a wonderful way to get that ballot, and they can mail it back.

Have you had—I appreciate the staff, Ranking Member's and ours, for the time they looked at that. Have you had any involvement with that type of thing? That could be implemented in all 50 States.

Mr. DEGREGORIO. Congressman, you are right. There are plenty of State examples and State initiatives to facilitate voting by military and overseas voters and ex-pats. Some States are doing a great job in trying these innovations, whether they are using electronic means to send a ballot through the Internet, allowing a voter to download their ballot off the Internet, or faxing ballots overseas. Most of them, in fact I think about all of them, follow a process of returning the ballots physically.

However, there is still this problem that we have in America with many of the States that have late primaries. So if you are in New York, or Washington, States that have primaries the second week in September, and they have to turn around to get their ballot ready for the November election, that may typically take 2 to 3 weeks. You are looking at maybe at best a 30-day period to get ballots to someone overseas and back. Study after study has shown it takes 42 days to get that done.

Mr. NEY. So e-mail would be instant.

Mr. DEGREGORIO. That is why, Congressman Ney, we are looking at several States, and we are going to highlight that in our study this year, to encourage our States to look at something like this to serve voters overseas.

Mr. NEY. I think it would be a wonderful thing to do because, again, the issue is the ability to vote, people's right to vote, and that is why with the provisional votes, because somebody one time said this could hold up elections, it is better to have a delay at the end of the day, have the provisionals counted, than for people to be turned away for whatever reason at a poll.

But for the ex-pats that are overseas and the military, it is the distance factor in getting it to them. Anything you could pursue on that I think would be really a wonderful thing.

I have one other question before my time runs out. With the whole issue of the security, Maryland, I believe, does random checks, if I remember right, on their machines. Isn't that correct?

Ms. DAVIDSON. Maryland does. Many States do, yes.

Mr. NEY. I don't know why the States don't do that, and this whole question of the security, just like the slot machines, they have this whole system from when they are manufactured to when they are tested in place, and with these machines, if there was required random testing, I think it would put to rest and people would feel better about the security of these machines. Have you looked into that at all?

Mr. DEGREGORIO. Mr. Ney, we are. In fact, in the draft we are developing for our certification process, as has been described this morning, and we are taking a look at doing random checks of voting equipment. As we look at certification of equipment, we are looking at the prospect of the EAC taking on a role of doing random tests of voting devices throughout the country.

Mr. NEY. In closing, I just want to say something. Also, thank you for your work with Louisiana. I personally talked to the secretary of state, and we have written a letter to Justice. Some States haven't complied, and Louisiana did everything humanly possible with the worst situation a State could have. I really have got to give the secretary of state and you working with him a lot of credit; and also as people were scattered about the country, to get those ballots out to them, I think Louisiana secretary of state and everybody involved with this, you all deserve a lot of credit in a bad situation to try some efforts there when other States haven't complied and didn't have the catastrophe that Louisiana had.

The CHAIRMAN. The gentleman's time has expired.

The gentlelady from Michigan, Mrs. Miller.

Mrs. MILLER. Thank you, Mr. Chairman.

I might pick up a little bit on what Representative Ney is talking about with military voting, in particular ex-pats, et cetera. Everybody is talking about vote on the Internet. Everything is happening on the Internet. And, of course, everybody has consternation about fraud and whether we would be able to, through digital signatures or what have you, verify that these people that are voting are the individuals that—who are actually casting that ballot.

I believe that the Department of Defense—and I am not sure if any of you are aware of this, but I think DOD actually has a contract to do vote by the Internet for overseas military. I am not quite sure how all of that would work. Obviously it would be easy enough to download a ballot for a national candidate, but individual precincts, even going down to precinct delegate-type things, they might not be able to download an entire ballot by precinct. I am not certain how that works.

Even if you had the ability to download a ballot and then had to fill it out and send it back, you would eliminate or certainly compress the time. The Chairman was mentioning 42 days, 45 days. You would eliminate a big part of the process.

Are any of you aware of the Department of Defense contract, and do you have any comment on that?

Mr. DEGREGORIO. We are certainly, Madam Congresswoman, well aware of the work that was done by the Federal Voting Assist-

ance Program under the Department of Defense that they did in 2004. It was called the SERVE Project, and it was a pilot project to allow people to cast ballots through the Internet, military and overseas voters. However, the project began in the Summer of 2003 and was shut down by the Department of Defense in March of 2004 because of the concerns of some academics over the security of the system.

Now they did spend, it was estimated to me, over $20 million on this project. We did get a private briefing about the results of their work, and that helps instruct us when we look at utilizing our funds to look into Internet voting, particularly for military and overseas voting. So it was helpful for us to learn from what they did.

But this is an important area, and I think one that certainly can provide greater access for military men and women and overseas voters, and that is why we are taking a look at it and want to devote some of our efforts in this area in addition to the Federal Voting Assistance Program.

Mrs. MILLER. Just one other question. Part of the total voting experience, when an individual or voter shows up at the polls, poll workers are a big part of the process. And some poll workers do their job very well, and some do not do a great job. But I am a big fan, and I know Michigan has done this—and if you can just tell us how many other States may have done this—of utilizing our younger generation for poll workers. When you have 16- and 17-year-olds, first of all they are willing to work those long hours for very little money, and they are very enthusiastic, which is a great thing. And it is a wonderful way to get them engaged into democracy, I think, as well. And as technology is changing, they are not afraid of the technology or new methods. No problem for them to change the way they are doing things. And they are always looking to improve on that.

And I am just wondering if the EAC has taken a position on that. It is a big part of the process. Any comment on that?

Ms. HILLMAN. Congresswoman, thank you for the question. The EAC is certainly a strong proponent of involving young people in the election process. And those States where the law allows the participation of young people, they certainly are beginning to put together creative programs.

I think, to answer a question that was raised earlier about some of the effects of the fact that the total appropriation wasn't made, some States have had to cut back on the amount of money they would have used for the training and recruitment of poll workers, including students, in order to fulfill their other responsibilities, such as the statewide voter registration and the databases.

There are the occasional elected officials who aren't sure that the amount of time they perceive has to go into the training of young people would provide them the benefit that they seek with respect to the perception of an adult poll worker perhaps coming back a second time; but through the college poll worker program, we found that the students really get engaged and have a much better appreciation and affection for the system once they are on the inside.

Mrs. MILLER. Thank you, Mr. Chairman.

The CHAIRMAN. I see no further questions. And we are going to have a vote on the floor in just a few minutes. So with that——

Ms. MILLENDER-MCDONALD. Just one quick one, Mr. Chairman.

The CHAIRMAN. Yes. The Ranking Member is recognized.

Ms. MILLENDER-MCDONALD. First, I would like to commend you on this. This is just great. I think it is so innovative. And this is volunteer—voluntary voting systems guidelines that you spoke about earlier. So this is the apparatus.

And we talk about, really, more high participation of voters. We look at the State of Oregon, where they have mail-in voting, by-mail-only voting. We are talking about early voting that some States are going to. And we have just got to get away from just one-size-fits-all now. We have got to do, to me, a myriad of things for voters to really find the time to participate. You have working mothers, working fathers, single parents, and so I think it is just so incumbent upon us to not be so myopic when it comes to just Tuesday voting, but have other means of voter participation. I am hearing that in Oregon they have high participation because of this mail-only type of voting.

And so I commend you on the work that you have done, the work that you are doing; you are just such an asset to us in trying to bring this democracy to—to continue this great democracy of ours.

And I thank you, again, Mr. Chairman, so much for this outstanding oversight hearing.

The CHAIRMAN. I thank you for that comment. And I am a little surprised to hear you support mail-only voting.

Ms. MILLENDER-MCDONALD. Well, there are many other ones, too, Mr. Chairman.

The CHAIRMAN. Well, I didn't want you to be accused of gender discrimination.

Ms. MILLENDER-MCDONALD. This is why he is a physicist, by the way.

Mr. NEY. I will be very brief. I just want to thank you, Mr. Chairman, for the hearing and also the Commission for the great work you do.

Jimmy Carter and—President Jimmy Carter and President Gerald Ford had said that next to the Voting Rights Act of 1965, this is one of the most profound pieces of legislation to affect the ability to do something about fraud and also to have people able to vote. And the big component follow-up to those comments in the Ford-Carter Commission, after legislation passed, is all of you and commissions. So I really appreciate the job that you have all done to break new ground where we never went before. Thank you.

The CHAIRMAN. And I would like to join in that.

Thank you very much for spending your time with us. You have been extremely helpful. Your testimony has been right on in terms of the issues that we were concerned about and wanted to look at. And so it has been very, very helpful to hear your thoughtful comments, and we will continue to look into this issue and we will be in further contact with you.

I ask unanimous consent that members and witnesses have 7 calendar days to submit material for the record, including additional questions of the witnesses, and for those statements and ma-

terials to be entered into the appropriate place in the record. Without objection, so ordered.

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 oversight hearing, the Committee is hereby adjourned. And thank you again for sharing your wisdom with us. The meeting is adjourned.

[Whereupon, at 11:42 a.m., the committee was adjourned.]