OVERSIGHT HEARING ON THE ELECTION ASSISTANCE COMMISSION

HEARING

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JUNE 17, 2004

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ELECTION ASSISTANCE COMMISSION

THURSDAY, JUNE 17, 2004

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

The committee met, pursuant to call, at 11:05 a.m., in Room 1310, Longworth House Office Building, Hon. Robert W. Ney (chairman of the committee) presiding.

Present: Representatives Ney, Ehlers, Linder, Doolittle, Larson, Millender-McDonald, and Brady.

Also present: Representative Hoyer.

Staff present: Paul Vinovich, Staff Director; Matt Petersen, Counsel; George F. Shevlin, Minority Staff Director; Thomas Hicks, Minority Professional Staff; Matt Pinkus, Minority Professional Staff; and Charles Howell, Minority Chief Counsel.

The CHAIRMAN. The committee will come to order. The committee is meeting today to hear from all four members of the Election Assistance Commission regarding the implementation of the Help America Vote Act of 2002.

It has now been 20 months since the Congress voted overwhelmingly in favor of, and President Bush signed into law the Help America Vote Act, known as HAVA.

I am proud to have been the chief architect of what I think was a very historic bipartisan legislation. Legislation that holds the potential to fundamentally improve the health of our Nation's democracy and strengthen the right of every eligible citizen to cast an accurate ballot, and have that ballot counted—providing much needed resources to States and localities in putting into place safeguards to protect the integrity of our elections process.

HAVA will help ensure that our democratic republic has election systems in which its citizens can have confidence and pride. As we have always said, we make it easier to vote and harder to cheat.

At the core of HAVA are three primary components. There is much more to the bill, but, first, HAVA establishes a bipartisan, four-member Federal agency: the Elections Assistance Commission, known as the EAC, whose purpose is to help States and localities implement HAVA's provisions by developing voluntary standards and guidance, issuing studies and reports on various election-related issues and serving as a clearinghouse for best-election-administration practices.

I think that the motto when we created it is that we are here from the government and we are here to help. I think that the energy level and the idea that was crafted into the written part of the law is becoming reality through the citizens that are serving

on this commission. I think that has been the tone of the law and the tone of our commissioners.

Second, HAVA establishes new voter rights, providing for second-chance voting, provisional ballots and enhanced access for individuals with disabilities, specifies new voting system standards, obligates first-time voters who register by mail to provide some form of identification before casting their ballots, requires each State to implement a computerized State-wide voter registration database, and sets requirements for certain voting information to be publicly posted at every polling place.

And, third, HAVA authorizes $3.86 billion in election reform spending to assist States and localities in meeting their new obligations under this law. This is the first time that Federal funds have been made available to assist State and local Governments in shouldering their election administration responsibilities.

So far, Congress has appropriated roughly $3 billion out of that total amount authorized by HAVA. The EAC is responsible for distributing the bulk of these funds, and there is still some more to go and we are always working toward making sure this is not an unfunded Federal mandate. Again, there are a few people I definitely want to publicly thank for that.

Through the Help America Vote Act, I think we have achieved a landmark legislative achievement in which Members of Congress may continue to make tremendous strides with legislation we can take pride in. We also realize that HAVA's passage represented a beginning, not an end.

Once President Bush put his signature on HAVA, the heavy lifting began. We are therefore privileged, I believe today, to have with us all four EAC commissioners. I want to thank all four of you for being here to provide us with details on the heavy lifting that is currently going on, because you all are doing that heavy lifting. Please give us your thoughts, your comments, positive and negative, whatever you want to say today, so that we can have a review.

In the half-year since the commissioners were installed in their current position, they have been confronted with a large number of tasks. For instance, the EAC has been responsible for distributing approximately $2.3 billion in payments to the States to assist them in meeting the requirements. Moreover, the EAC has had to deal with the issues of electronic voting systems security, which has been the subject of a great deal of media attention.

I will also note that we will have another hearing that will deal with a wide variety of issues, including electronic voting systems security and other issues we need to talk about with HAVA and how it is implemented. So I expect advocacy groups, people with interest, to be here as we will schedule it with our ranking Member's office in a short period of time.

The first public hearing conducted by the Commission related specifically to that issue—the voting systems security. And the chairman recently issued a series of recommendations for maintaining the integrity of electronic voting systems. We look forward to receiving more information about that issue and of course also during this hearing.

We are also very interested in hearing how well States and localities are doing in implementing the HAVA requirements that went

into effect this year, as well as those that will go into effect in the 2006 election cycle. Thus, it is our hope that today's hearings will provide an opportunity for the Members of this committee to become more informed about the current status of HAVA's implementation as well as to learn more about the issues and challenges currently facing the EAC.

And in summing up before I close—and the timing of Congressman Hoyer, the Democratic Whip, is very perfect. Actually, I was going to make some comments and tell you I said good things, but now you will be here to hear them.

But I said earlier I wanted to conclude with something. This was a bill, frankly, that Congressman Hoyer approached me on and said, "We need to do something," and everybody talked about the hanging and dimpled chads that were talked about.

This—it looked at that issue, but it went far beyond that. It became a piece of legislation that—I don't want to miss anybody, but it just, I think, generated into a wonderful situation.

My secretary of state, Ken Blackwell, got together with other secretary of states, such as Secretary of State Priest, and many others were involved; Connie McCormick on the Board of Elections, and a lot of other people involved with advocacy groups. They came forward to bring their input to the table, groups that cared about voting, groups that cared about disenfranchisement.

The issues went far, far, far beyond a hanging chad, and Congressman Hoyer had the diligence. He worked with us. Congressman Blunt was another Member that put a lot of time into it, and on an overwhelming bipartisan basis, Congressman Conyers was involved. We passed this on the floor of the House, went to the conference committee, and through Senator Chris Dodd, Senator McConnell, Senator Bond, and other Members of the Senate, we finalized this bill.

It was a bill that had a real conference committee. Congressman Hoyer can tell you that. I mean, we really had one where we sat until 5 o'clock in the morning. Members participated and the staffs worked diligently, and some people said, "Why it is taking so long?" It was a very complicated bill, and we didn't want to get it wrong. We envisioned, without knowing what your names would be, what the Board would be like. We felt that the way the Board was structured, you could put decent people onto it, it could be appointed, and we could begin this process.

I want to thank Congressman Larson for his support of that bill but also, as ranking member, for his ongoing support to work with us.

I think this hearing is important, and the next hearing we are going to have will also be important. This is our ability as a Congress to listen to what you have to say, to see how the bill is progressing, to see where we need to step in or where we need to not interfere, what we can do, and basically how everything is going.

I am going to stop with that and yield to our ranking member. But, again, I want to thank all of the Members of our committee for being here, Congressman Larson for following through with this, as his responsibility as ranking member to oversee Federal election law.

But, again, we couldn't be here if it wasn't for Congressman Hoyer. He was our partner on this committee for quite a while, on this bill, led the charge, had the integrity, and wanted to do what was right. That is why I think it was a good model with a great working relationship on this bill. I am just very pleased to be here.

With that, I will yield to our ranking member, Mr. Larson.

Mr. LARSON. Thank you, Mr. Chairman. Let me, at the outset, associate myself with your remarks and add to the accolades, first and foremost, to recognize the enormous legacy that HAVA has created. And it is a demonstration of what bipartisan cooperation can yield. Both you and our distinguished Democratic whip deserve a tremendous amount of credit for the way in which you marshaled the resources, the energy and the votes to make this come to fruition.

It is a hallmark, in terms of what it means and how we can function and operate as an institution. More importantly, I can't think of a more important and essential function than securing the franchise of our citizens.

I would also like to acknowledge all of our distinguished panelists. Indeed, you know, we are pinning our hopes on your great integrity, your zeal, and your desire to carry out the mandate of HAVA.

And that is why, Mr. Chairman, these hearings are so vitally important. And again, I commend you. I know of your deep concern to make sure that we have a body of law that is functional and working. And I have written remarks that I would like to submit for the record.

[The statement of Mr. Larson follows:]

CHA Oversight Hearing on Election Assistance Commission and the Implementation of the Help America Vote Act

June 17, 2004

11:00 AM
1310 Longworth House Office Building

REP. JOHN B. LARSON'S OPENING STATEMENT

I would like to thank the Chairman for calling this very important hearing. The Election Assistance Commission (EAC) was formed after the 2000 Presidential election by the Help America Vote Act to serve as the national clearinghouse for all matters involving elections. In addition, the EAC serves as the distribution point for billions of dollars earmarked for the states to facilitate election operations.

This marks the first time in our nation's history that the Federal government has paid for the administration of elections. Traditionally, states have shouldered the entire burden of the cost, sometimes having to decide between funding the maintenance of roads and infrastructure, the construction of schools or the management of elections. However, HAVA is not a blank check. States will only receive money if they can demonstrate compliance with HAVA's strict requirements.

Over the past several months, my staff and I have attended various meetings about the voting process, and monitored elections across the country. We have heard many concerns about the status of the 2004 electoral process. The concerns range from the status of HAVA required, centralized state-wide registration data bases and the availability of provisional ballots, which are required by HAVA, to the use of Direct Recording Electronic (DRE) voting systems and new identification requirements for first time voters who register by mail.

We are a nation governed by majority rules but minority rights. Every person who is eligible to vote should be able to do so in a private, secret manner and they should have a reasonable belief that their vote was counted accurately

Throughout the voting history of our great nation, the integrity of all voting equipment has shown signs of imperfections. For example, hanging and pregnant chads resulted from punch card machines; malfunctioning older lever machines became difficult to repair since they are no longer manufactured; and an auditing mechanism does not exist on voting machines. There have also been problems with paper ballots, pencils and ballot boxes. This does not mean that we should scrape the election process or voters should stay home from the polls. To the contrary, we should be more vigilant in the monitoring of elections.

My home state of Connecticut uses both optical scan machines and retrofitted lever machines. Following local elections last November, Connecticut Secretary of State Susan Bysiewicz issued a statement indicating that voters liked the ease of electronic voting, and they expressed confidence that their votes were accurately recorded. Only voters who used the older lever machines experienced problems.

Although the manner in which citizens vote is very important, improving voting machine technology was not the only goal of HAVA. According to a 2001 MIT/Cal Tech study, difficulties with registration were the number one problem with the 2000 election. Between 1.5 and 3 million voters were turned away from the polls without casting a ballot on Election Day 2000.

HAVA established two remedies to prevent the potential for disenfranchised voters in 2004. It is crucial that both remedies are implemented. First, each state must create an interactive, computerized, statewide voter registration list that is accessible to each polling station in the state. The list will serve as the official list for the entire state, and contain the name and address of every voter in the state.

The second remedy, provisional voting, allows a person who believes he or she is registered to vote in a jurisdiction, but whose name does not appear on the centralized voter list, to cast a ballot. The ballot is set aside and counted only after the eligibility of the voter has been established. The voter then may call the state sponsored 1-800 number or visit a secure Website to determine if his or her vote was counted or why it was not.

It is extremely important that these two aspects of HAVA function correctly. It will not matter what type of machine is used in the polling station, if you are not allowed to cast a ballot.

While concern for those trying to access polling places is warranted, another aspect of the debate relates to those already on the inside: poll workers. Adequate training for poll workers is severely lacking, and yet, they are voters' vital connection to voting procedures. We ask these dedicated individuals to work often an 18 hour day, with little pay, and very little, if any, training.

Most drivers' education classes require more training than a poll worker position. However, we can help poll workers move from the dirt road to the information highway. Similar to a driving exam, poll workers should be given sufficient opportunities to test equipment and learn all the features. I have read reports of poll workers who did not plug in machines, or failed to turn machines on at the start of Election Day. Better training will prevent many of these problems.

Most poll workers are retirees who volunteer for this position because they want to participate in the election process. I would like the commissioners to explain what is being done to recruit additional poll workers and provide sufficient training, not only for voting equipment operation, but for proper Election Day procedures as well.

I hope to also hear the commissioners' comments concerning funding issues, particularly in the areas of research and development of new voting equipment and procedures. One of the hallmarks of HAVA is that it does not mandate voting equipment. We don't know what technology tomorrow might bring. Today's cutting edge technology is tomorrow's museum exhibit.

Is there sufficient funding for your partnership with the National Institute for Standards and Technology for the HAVA mandated reports and studies and equally as important the funding levels of the EAC? Is the current funding level satisfactory for the EAC to reasonably accomplish its job?

I am also interested in hearing from the commissioners their assessment of recent New York Times' editorials calling into question the views and actions by the senior Senator from Connecticut and one of chief authors of HAVA, Chris Dodd, along with Jim Dickson, Vice-President for Governmental Affairs for the American Association of People with Disabilities, for their roles in trying to improve the election process.

Lastly, I will be interested in hearing the commissioners discuss how the EAC will work to ensure that our men and women fighting for democracy overseas and Americans living abroad are able to receive voting information, cast a ballot, and have their ballot counted.

Thank you again, Mr. Chairman, for convening this hearing and I look forward to hearing the testimony of the members of the Commission.

The CHAIRMAN. Without objection.

Mr. LARSON. I am very interested in hearing the testimony from the commissioners.

I am also very concerned about a couple of articles that appeared in the New York Times and editorials that I have read in the past week. But I would like to submit them for the record.

[The information follows:]

New York Times

June 13, 2004

MAKING VOTES COUNT

Gambling on Voting

If election officials want to convince voters that electronic voting can be trusted, they should be willing to make it at least as secure as slot machines. To appreciate how poor the oversight on voting systems is, it's useful to look at the way Nevada systematically ensures that electronic gambling machines in Las Vegas operate honestly and accurately. Electronic voting, by comparison, is rife with lax procedures, security risks and conflicts of interest.

On a trip last week to the Nevada Gaming Control Board laboratory, in a state office building off the Las Vegas Strip, we found testing and enforcement mechanisms that go far beyond what is required for electronic voting. Among the ways gamblers are more protected than voters:

1. The state has access to all gambling software. The Gaming Control Board has copies on file of every piece of gambling device software currently being used, and an archive going back years. It is illegal for casinos to use software not on file. Electronic voting machine makers, by contrast, say their software is a trade secret, and have resisted sharing it with the states that buy their machines.

2. The software on gambling machines is constantly being spot-checked. Board inspectors show up unannounced at casinos with devices that let them compare the computer chip in a slot machine to the one on file. If there is a discrepancy, the machine is shut down, and investigated. This sort of spot-checking is not required for electronic voting. A surreptitious software change on a voting machine would be far less likely to be detected.

3. There are meticulous, constantly updated standards for gambling machines. When we arrived at the Gaming Control Board lab, a man was firing a stun gun at a slot machine. The machine must work when subjected to a 20,000-volt shock, one of an array of rules intended to cover anything that can possibly go wrong. Nevada adopted new standards in May 2003, but to keep pace with fast-changing technology, it is adding new ones this month.

Voting machine standards are out of date and inadequate. Machines are still tested with standards from 2002 that have gaping security holes. Nevertheless, election officials have rushed to spend hundreds of millions of dollars to buy them.

4. Manufacturers are intensively scrutinized before they are licensed to sell gambling software or hardware. A company that wants to make slot machines must submit to a

background check of six months or more, similar to the kind done on casino operators. It must register its employees with the Gaming Control Board, which investigates their backgrounds and criminal records.

When it comes to voting machine manufacturers, all a company needs to do to enter the field is persuade an election official to buy its equipment. There is no way for voters to know that the software on their machines was not written by programmers with fraud convictions, or close ties to political parties or candidates.

5. The lab that certifies gambling equipment has an arms-length relationship with the manufac-

turers it polices, and is open to inquiries from the public. The Nevada Gaming Control Board lab is a state agency, whose employees are paid by the taxpayers. The fees the lab takes in go to the state's general fund. It invites members of the public who have questions about its work to call or e-mail.

The federal labs that certify voting equipment are profit-making companies. They are chosen and paid by voting machine companies, a glaring conflict of interest. The voters and their elected representatives have no way of knowing how the testing is done, or that the manufacturers are not applying undue pressure to have flawed equipment approved. Wyle Laboratories, one of the largest testers of voting machines, does not answer questions about its voting machine work.

6. When there is a dispute about a machine, a gambler has a right to an immediate investigation. When a gambler believes a slot machine has cheated him, the casino is required to contact the Gaming Control Board, which has investigators on call around the clock. Investigators can open up machines to inspect their internal workings, and their records of recent gambling outcomes. If voters believe a voting machine has manipulated their votes, in most cases their only recourse is to call a board of elections number, which may well be busy, to lodge a complaint that may or may not be investigated.

Election officials say their electronic voting systems are the very best. But the truth is, gamblers are getting the best technology, and voters are being given systems that are cheap and untrustworthy by comparison. There are many questions yet to be resolved about electronic voting, but one thing is clear: a vote for president should be at least as secure as a 25-cent bet in Las Vegas.

New York Times

June 11, 2004
MAKING VOTES COUNT
The Disability Lobby and Voting

Two obvious requirements for a fair election are that voters should have complete confidence about their ballots' being counted accurately and that everyone, including the disabled, should have access to the polls. It is hard to imagine advocates for those two goals fighting, but lately that seems to be what's happening.

The issue is whether electronic voting machines should provide a "paper trail" — receipts that could be checked by voters and used in recounts. There has been a rising demand around the country for this critical safeguard, but the move to provide paper trails is being fought by a handful of influential advocates for the disabled, who complain that requiring verifiable paper records will slow the adoption of accessible electronic voting machines.

The National Federation of the Blind, for instance, has been championing controversial voting machines that do not provide a paper trail. It has attested not only to the machines' accessibility, but also to their security and accuracy — neither of which is within the federation's areas of expertise. What's even more troubling is that the group has accepted a $1 million gift for a new training institute from Diebold, the machines' manufacturer, which put the testimonial on its Web site. The federation stands by its "complete confidence" in Diebold even though several recent studies have raised serious doubts about the company, and California has banned more than 14,000 Diebold machines from being used this November because of doubts about their reliability.

Disability-rights groups have had an outsized influence on the debate despite their general lack of background on security issues. The League of Women Voters has been a leading opponent of voter-verifiable paper trails, in part because it has accepted the disability groups' arguments.

Last year, the American Association of People With Disabilities gave its Justice for All award to Senator Christopher Dodd, an author of the Help America Vote Act, a post-2000 election reform law. Mr. Dodd, who has actively opposed paper trails, then appointed Jim Dickson, an association official, to the Board of Advisors of the Election Assistance Commission, where he will be in a good position to oppose paper trails at the federal level. In California, a group of disabled voters recently sued to undo the secretary of state's order decertifying the electronic voting machines that his office had found to be unreliable.

Some supporters of voter-verifiable paper trails question whether disability-rights groups have gotten too close to voting machine manufacturers. Besides the

donation by Diebold to the National Federation of the Blind, there have been other gifts. According to Mr. Dickson, the American Association of People with Disabilities has received $26,000 from voting machine companies this year.

The real issue, though, is that disability-rights groups have been clouding the voting machine debate by suggesting that the nation must choose between accessible voting and verifiable voting.

It is well within the realm of technology to produce machines that meet both needs. Meanwhile, it would be a grave mistake for election officials to rush to spend millions of dollars on paperless electronic voting machines that may quickly become obsolete.

Disabled people have historically faced great obstacles at the polls, and disability-rights groups are right to work zealously for accessible voting. But they should not overlook the fact that the disabled, like all Americans, also have an interest in ensuring that their elections are not stolen.

The CHAIRMAN. Without objection.

Mr. LARSON. And also a response by the American Association for the People of Disabilities.

[The information follows:]

Re "The Disability Lobby and Voting" (lead editorial, June 11):

The American Association of People with Disabilities (AAPD) strongly supports election systems that are accessible, verifiable and secure. We oppose the "paper trail" requirements that have been proposed by California and others because we are not convinced that a voter-verified paper ballot will in fact make elections more secure, and we know that these requirements violate federal accessibility mandates.

Accessible touchscreen voting has already been implemented in states like Maryland and Georgia in a manner that has improved the accuracy and security of elections.

We also know that state requirements of paper trails, at least for now, are creating access problems for voters with some types of disabilities, and are delaying accessibility for people with limited English proficiency.

The editorial asserted that the League of Women Voters has been a leading opponent of paper trails "in part because it has accepted" the arguments of AAPD and other disability groups. In fact, AAPD has followed the League's lead on this issue because we respect its long history and expertise in advocating for fair and accurate elections.

The editorial correctly reported that AAPD has received a total of $26,000 from voting machine companies this year. Our 2004 budget, which exceeds $2 million, includes contributions from a wide variety of sources.

We advocate for policies that are in the best interests of all people with disabilities, and do not let any funding source threaten our independence and integrity. For example, we received more than $100,000 from pharmaceutical companies this year, but we opposed the Medicare prescription drug legislation that was recently enacted with strong support from that industry.

AAPD worked closely with Senators Mitch McConnell and Christoper Dodd and Representatives Bob Ney and Steny Hoyer on the accessibility requirements in the Help America Vote Act (HAVA) of 2002. Because of this important legislation, America has the potential to realize dramatic improvements in election accessibility and accuracy. AAPD will continue to advocate for election systems that can accomplish these equally important goals.

Sincerely,

Andrew J. Imparato
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Mr. LARSON. And at some point, I would like to hear from the commissioners, if you are familiar with those articles, to get your personal response.

I want to say that I have personally met with Members of the civil rights and disabilities communities and heard from concerned citizens around the country pertaining to voting issues.

I would like to hear clarification from our Commissioners on where the EAC is on making sure that this and future elections run as smoothly as possible. The Nation obviously is watching very closely. And I am concerned at where the commission is on providing to the States best practices on provisional ballots, the new voter ID requirements, voter registration lists, absentee ballots, military and overseas voters and absentee ballots as well.

I also hope to hear from the commissioners concerning funding issues, particularly in the area of research and development of new voting equipment and procedures.

One of the hallmarks of HAVA is that it does not mandate voting equipment. We don't know what technology tomorrow might bring. Today's cutting-edge technology could be tomorrow's museum piece.

I am further interested in whether or not there is sufficient funding for your partnership with the National Institute for Standards and Technology and for the HAVA mandated reports and studies and equally as important, the funding levels of the EAC itself.

I want to thank you, Mr. Chairman, again for conveying this important hearing. I want to thank our distinguished majority whip, who I know has a deep concern and vested interest in this issue as well, for availing himself and joining us this morning as well. And I look forward to the testimony from our commissioners.

The CHAIRMAN. Well, I thank the ranking member.

Also the ranking Member has asked for unanimous consent that Congressman Hoyer be able to participate in this hearing. Without objection. Congressman Hoyer is more than welcome to participate in this hearing.

Any opening statements?

Mr. DOOLITTLE. No.

Mr. LINDER. No.

Mr. BRADY. Yes, Mr. Chairman. Just briefly.

I guess I need to note for the record, I am a party chairman in the City of Philadelphia, have been for the last 20 years. My main responsibility on election day is any and all. Anything that has anything to do with election day operations, I am responsible for it.

That includes poll workers, election day workers, a place to poll, a physical place where the machines can go and the responsibility for getting the machines there and, at the end of the day, responsibility to make sure that they are totaled up and the votes that were cast were cast properly and for the right person.

My main interest is in fairness. And probably more so than that, a lot more so than fairness, but also is accessibility to every voter that has a right to vote, that should have a right to vote, make it as easy as possible for them to vote.

In our modern day, with the voting process as it is, we don't get enough participation as it is. We are not like in some countries, where they get 100 percent participation, or most, where they get

lined up to vote. We have to—we have a problem with people, when they register, to actually get them out to vote and vote for whoever they want to vote for.

And I think the main thing you need to make much more easier—I understand that there are some fail-safes that we have to put into place to make sure that nothing happens, that the vote is done accurately and, again, not to have what my good chairman had made reference to, the hanging chads or the pregnant chads.

I didn't even know what a chad was until the Florida election. But we just need to make sure that—not to be so zealous in making sure that we hinder people when they come out to vote, make sure it is accessible. We want to let them know that we are there to try to make sure that they can have their vote cast properly the way that they decide to have it done.

I thank the Chairman and ranking Member for having this hearing, bringing it to light, and letting people know that we are interested, that we do want to make sure that it is done in a bipartisan fashion, and it is done in fairness.

And as always, I would like to thank Steny Hoyer for all of his participation, having hearings. We had hearings in the City of Philadelphia, which he conducted, to make sure that all of our citizens that are eligible can vote in a proper way. So thank you.

The CHAIRMAN. Thank you.

Other opening statements?

Mr. HOYER. Mr. Chairman, first of all, thank you.

I want to thank the committee for giving me this opportunity to participate with you. I enjoyed very much my service with Bob Ney. Bob has indicated that we considered this in a bipartisan fashion. That was absolutely correct.

In fact, in the last Congress, the speaker and Leader Gephardt both pointed to this as the best symbol of bipartisan working together, both in the House, particularly in the House, and I think in the Senate as well.

It was a historic bill. It was a historic civil rights bill. It was a historic federalism bill. From 1789 to 2002, essentially the Federal Government did not contribute at all to the management or conducting of Federal elections. Clearly, the States and localities funded their own elections, but they also funded our elections.

As a result of it being easy to defer technological advances in the election process and expenditures for election administration, to some degree they became the stepchild of State and local Government funding. One of the things that HAVA did was to refocus the necessity, and the 2000 election, of course, focused us, not just in Florida but throughout the country, on the necessity of having a system in what we believe is the world's greatest democracy that assured its citizens of access and accuracy and confidence in their vote.

We made a number of changes. And, Mr. Chairman, I want to thank you for having this hearing and subsequent hearings. In fact, Mr. Larson and Mr. Brady, and Mr. Linder and Mr. Doolittle and other Members of this committee—Mr. Ehlers is not here, but he made a very valuable contribution to HAVA in ensuring that NIST was a partner in the process of determining not what we would mandate but the advice and counsel that we would give to

States and localities on the technology that was available to run elections.

I believe that the commission, although for no fault of your own, you started very late, has been very vigorous in the undertaking of your responsibilities. I am working with Mr. Ney and Mr. Istook and Senator McConnell and Senator Lott to assure that we get you some more money pretty quickly. And Mr. Ney and I have been talking about that.

But I want to congratulate you for undertaking your responsibilities with a great deal of vigor and a great deal of responsibility.

Mr. Chairman, I had the opportunity to read your statement that you made in Maryland. I talked to Linda Lamone about that statement. I think you made some very good suggestions.

We obviously have some controversy. We have some controversy in California and throughout the country about the new technology, the DREs, the computer voting, touch screens and whether or not we can assure the fact that they will be credible reporters of the decisions that citizens make. That obviously is an important question for us to resolve so the confidence of voters can be established.

In addition, one of the very important things we did, Mr. Chairman, as you know, is that more people were disenfranchised because of registration problems than were disenfranchised because of technical difficulties in the voting process.

And one of the things we have done, as you know, is to provide for Statewide registration with local election interface, critically important. That will not be accomplished by this election. And, indeed, technological change will not be accomplished. But, we have a great responsibility to act as vigorously as possible so that, in the next few months, come September there will be a much greater confidence level in the media, in the groups, with the disabilities group to assure that they have access, which has been denied to them.

One of the hallmarks of the American democracy is the secret ballot. And too many of those with disabilities were denied that secret ballot. Technology now allows that. And we need to assure it.

So, Mr. Chairman, thank you very much for giving me this opportunity to participate with you.

Commissioners, thank you very much for pursuing this. And together, I think we will see that HAVA resulted in a much better system in which our citizens much greater confidence. Thank you.

The CHAIRMAN. I thank the gentleman.

STATEMENTS OF HON. DeFOREST B. SOARIES, JR., CHAIRMAN, ELECTION ASSISTANCE COMMISSION; HON. GRACIA HILLMAN, VICE CHAIR; HON. PAUL DeGREGORIO, COMMISSIONER; HON. RAY MARTINEZ, COMMISSIONER

The CHAIRMAN. We will get to why we are here today, first by introducing Commissioner DeForest B. Soaries, current chairman of the EAC.

Commissioner Gracia Hillman, current EAC vice chair. Commissioner Paul DeGregorio, Republican Member of the EAC, and Commissioner Ray Martinez, Democratic Member of the EAC.

We will start with Commissioner Soaries.

STATEMENT OF HON. DeFOREST B. SOARIES, JR.

Mr. SOARIES. Thank you so much, Mr. Chairman, and ranking Member, and Members of this committee, Mr. Hoyer, for this opportunity to come and share with you an update on the work of the EAC.

We have submitted a 20-page written testimony, and in the interests of time, I will not read that to you. We have many appendices. I will simply summarize the contents of that testimony, allow my colleagues to have introductory remarks and then dedicate as much time as you have to answering specific questions about our work.

The presence of all four commissioners should represent to you our commitment and respect for this body, for this committee, for your leadership, Mr. Chairman, and for this process.

Let me begin by thanking you, Mr. Chairman, for your leadership, along with your partnership with Mr. Hoyer and his leadership on the creation of the Help America Vote Act of 2002. We have discovered that throughout this country, peoples' hopes have been lifted and expectations have been expanded as a direct consequence of this legislation.

When people ask the question, what is different in America between 2000 and 2004, the critical answer lies in the language of the Help America Vote Act of 2002. And so thank you on behalf of the country for this great product.

In our written testimony, we summarize some of the highlights of our having gotten started. As you know, we had the unenviable task of creating a brand new agency during a year when we have a Federal election. And I need not go into the details as to the complexity of that matter, but the testimony describes the process that we engaged in hiring some staff, in publishing State plans, in securing detailees from other agencies to assist us in our work, meetings with civil rights groups, coordinating functions with the Department of Justice, the Department of Health and Human Services, the Office of Management and Budget. Certainly we received administrative support from the General Services Administration. And we even had meetings at the Environmental Protection Agency, just taking help from where it existed to craft our strategy and our process to get about our mission.

We also describe to you in our written testimony what we consider to be accomplishments about which we are quite proud. We visited over 20 primary elections personally as commissioners. We held a public meeting in March where we conducted the first business of the commission.

We created our budget for 2005, while we were still negotiating our budget for 2004, and appeared before our subcommittee in this body to justify our budget for 2005. We were able to manage the transfer of the Office of Election Administration from the FEC to the EAC. We were able to get up an office space not far from here. We were able to launch our website. We issued a Human Factors Report, which we would like to discuss in whatever detail you would like to today.

And we held two public hearings, the first on the use and reliability and security of electronic voting devices, and the second on

punch card and lever machine voting devices, which will be used throughout the country in 2004, and on provisional ballots.

Our written testimony also has new information, information that has not been disclosed before, and we would like to focus just for a minute on what that is.

In the first category are three things that are germane to our generic mission under HAVA. The EAC has some deadlines and some responsibilities that are very explicit in HAVA, and I would like to share with you three updates on those responsibilities.

In the first instance, it is our task, after having published the State plans and received 45 days of comment as a result of that publication, to distribute Title II funds to the States to assist them in a manner that Mr. Hoyer described.

As of today, 25 States have self-certified their compliance with HAVA, consistent with the language of the law, and today, I am happy to announce to you that we are in the process of releasing $861 million to 25 States, and they should receive those checks by next week.

The second responsibility we have under HAVA is the creation of standards and advisory boards, which will give an inclusive aspect to the development of the standards that ultimately will guide the States in the use of voting equipment.

The Standards Board is now in place. That board under HAVA has 110 members, and the first meeting will be in Houston, Texas, on the 29th of this month.

The Advisory Board consists of 37 persons under HAVA. That board is in place, and that board will have its first meeting in Houston, Texas on June 28th, of this month.

The third update I would like to provide is pursuant to another committee that is very critical to the outcome of our policies, that relates to the use of any particular voting device, and that is the Technical Guidelines Development Committee.

HAVA assigns to this commission the responsibility of creating standards that become guidelines for the States to use in Federal elections. The Technical Guidelines Development Committee is a very specific committee under HAVA with representation from various bodies. I am happy to report today that that committee has now been appointed, and that committee will have its first meeting in the next 30 days.

And so those developments position the commission for its long-term mission that hopefully will result in the entire country reflecting practices in Federal elections that were envisioned by HAVA.

But as we began our work, it was obvious to us, based upon meetings that we had and, frankly, based on commonsense, that we still had to figure out what kind of impact we could have this year, in November.

HAVA assumed in its origin that, by 2007, that its vision would be fully manifest in the way the country operated. But commonsense said that people needed to know, and we were required to respond to the question, what impact can you make as an EAC on this November's election?

There are three areas broadly that our report includes and we would like to discuss today. One has to do with the best practices or what we call our HAVA tool kit. There are certain things that

will be different this year than ever before. And we are now in our third draft of completing best practices as it relates to both HAVA mandates, provisional ballots, ID requirements, signage in the polling place and the complaint procedure, so that we can distribute that information by mid-June to every election official and every community and advocacy group in the country, to ensure that we are on the same page as it relates to HAVA requirements in 2004.

The best practices focus primarily on equipment usage. And its not our job to tell jurisdictions what equipment to use, but it is our job to give jurisdictions guidance on the use of those products. We will have, by the time we meet with our Standards Board, a final draft for the Standards Board to review, that we can distribute throughout the country to ensure that local jurisdictions have as much information as they can on the use of the variety of voting devices.

We also are concerned about the issue of poll workers. We know that, beyond some of the technical issues, we need about 2 million people to work on election day for a Federal election. We also know that, in jurisdictions around the country, we have information that suggests that we are understaffed.

It is very difficult to recruit poll workers. We have an aging population of poll workers. The complexity of voting devices makes it even harder for the existing poll workers, and we just don't have enough numbers. We have begun talking to national corporate leaders. We have begun talking to national organizations, fraternities, sororities and others, and we are preparing now to roll out a national poll worker initiative where, for the first time in the history of the country, the Federal Government is helping local jurisdictions recruit and track poll workers that they can train to work on election day.

We have on our website today an opportunity for any American to sign up through their local State election director to be a poll worker in their jurisdiction. We think that will help the small districts, like yours, Mr. Ney, that only need a handful of poll workers, and larger, like Los Angeles that requires almost 25,000 poll workers.

The college program, that we should have some real sense of timing about tomorrow, we have a critical meeting tomorrow on the Help America Vote Act College Program, where we think we can partner with organizations that already have access to mobilizing college students to link into this November, sufficient to give college students an opportunity to work on the polls in November.

Finally is the issue of security. We have received probably more mail and more phone calls on the issue of security for electronic voting devices than we have received on any other subject. I have proposed, as a result of conversations with commissioners, meetings with groups, research and the public hearing we had on May 5th, a strategy that appropriately positions this commission to address the issue of security in a proactive way.

I have to remind the committee, Mr. Chairman, that when we talk about security and electronic voting devices, we are not attempting to fix a problem that has been demonstrated to undermine any previous election, rather we are attempting to prevent

problems that we acknowledge exist on a potential basis due to vulnerabilities that have been discovered.

In that sense, we think there are some proactive steps we can take, one of which is asking vendors to register their software at the National Software Reference Library. Another is providing—from the vendors to the local election officials—the source code that can be analyzed and verified as being authentic. Another is by asking every jurisdiction to do something that they have never done before to enhance security, in some districts, it is simply the chain of custody for the equipment.

We have met with the Department of Justice, because we want to remind people that tampering with elections is a Federal crime, and the Justice Department has assured us that they will work with us to prosecute people who have been identified as suspects in tampering with Federal elections.

And the final thing we want to do is to broadly publish the fact that we will collect data on election day that identifies problems in voting devices. What that does is acts as a deterrent to ensure that vendors take more seriously the fact that we will know about malfunctions, but also for the first time, provide through our clearinghouse function a central repository of information that gives us some sense of which machines and which devices are working well or not.

So I think that we have positioned ourselves for the long term mission of HAVA to get us where HAVA intended to go and the immediate needs to get us through this Federal election in a way that gives the American people confidence that the outcome has integrity.

And so thank you, Mr. Chairman, for this opportunity to be here today to report to you and other Members the progress that we have made, the plans that we have made, and I would like now to call upon my colleagues to give their opening remarks and then answer any questions that you have.

[The statement of Mr. Soaries follows:]

STATEMENT OF
U.S. ELECTION ASSISTANCE COMMISSION
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON HOUSE ADMINISTRATION

June 17, 2004

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

We are pleased to be here this morning to discuss our 2004 activities to implement the Help America Vote Act of 2002 (HAVA). In our testimony, we will review our progress and accomplishments, and our plans for the balance of this fiscal year and FY 2005.

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

Mr. Chairman, we are proud of the accomplishments that we have made to date. As you and the members of this Committee know, we have worked under very challenging circumstances, which we will address in this testimony. Nonetheless, we decided, in strong bi-partisan unity, to not let the challenges and obstacles that we faced prevent us from doing the work that the President, Congress and perhaps most importantly, the voters of America, are depending on us to do.

In our testimony this morning, we will discuss the status of several important aspects of HAVA, including Title II payments; our review of the use, reliability, accessibility and security of various voting machines; and other issues related to HAVA implementation, including the recruitment and training of poll workers, and provisional voting. We will review our clearinghouse, resource and grants programs functions and steps we have taken to work with election administrators to minimize chances for irregularities in the November 2004 elections.

As you know Mr. Chairman, HAVA established EAC as a new Federal agency, to be headed by four Commissioners, who are appointed by the President. The Commissioners serve staggered terms and no more than two of them may be of the same political party. HAVA Section 203(a)(4) required EAC to be established no later than 120 days after the enactment date of the law. HAVA was enacted on October 29, 2002; therefore, EAC should have been established by February 26, 2003, but the Commissioners

were not appointed until December 13, 2003. This delay resulted in a number of set backs in the implementation of HAVA, including the appropriation of insufficient Fiscal Year 2004 funds ($1.2 million) to support the start up and operational costs of EAC. Appendix B summarizes HAVA Authorizations and Appropriations for FY 2003 and 2004.

GETTING STARTED

When we began our work at the beginning of January 2004, we were immediately confronted with the significant challenge of finding the estimated $800,000 that it would cost to meet HAVA requirements that State plans on HAVA implementation be published in the Federal Register. For without satisfying this requirement, EAC would not have been able to release the $2.3 billion that had been appropriated in FY 2003 and 2004, for Title II requirements payments to the States. In cooperation with GSA, EAC was able to publish the State plans and is preparing to issue payments to 25 States that have self-certified and have satisfied the eligibility requirements of HAVA section 253. An additional 2 self-certifications are pending review by the U.S. Department of Justice and we expect to continue receiving self-certifications from the other 28 States during the next several weeks.[1]

Our other major challenge was to determine how, with an FY 2004 appropriation of only $1.2 million, we could afford to rent, furnish and equip EAC offices; hire staff; pay our salaries; receive the transfer of responsibilities of the Federal Election Commission Office of Election Administration (OEA), as required by HAVA; and meet at least some of the HAVA mandates to establish voting system standards and adopt voluntary guidelines for the States.

We began hiring EAC staff in May and under our current budget and cash flow projections, we must stagger our hiring and will bring on board about 2 employees per month through September. We were able to rent office space on April 1, but only after the U.S. General Administration Services (GSA) approved a Fiscal Year 04 rent waiver for EAC. And, we were able to accept transfer of the OEA on April 1, when EAC moved in to its new offices.

HAVA mandates EAC to appoint an Executive Director, a General Counsel, and an Inspector General but as noted above, our funding constraints have caused us to postpone these hires. We expect to appoint an Interim Executive Director and the General Counsel within the next couple of months. Additionally, we are considering our options with respect to the appointment of an Inspector General (IG), including exploring the possibility of sharing an IG with another small commission. In the meantime, EAC received 5 employees with the transfer of OEA on April 1, and has utilized employees on detail from other agencies to fill our critical staffing needs.

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[1] Under HAVA, references to States includes American Samoa, District of Columbia, Guam, Puerto Rico and U.S. Virgin Islands.

These funding limitations and the delayed establishment of EAC also led to several set backs in the implementation of HAVA. These delays are fully addressed in our Fiscal Year 2003 Annual Report, which was submitted to this Committee and to the Senate Rules on April 30, 2004. For your convenience, we have provided another copy of our FY 2003 Annual Report with this statement.

Despite our late start and the limitations of our resources, we have accomplished a fair amount since the beginning of January 2004. Outlined below are some of these accomplishments.

EAC ACCOMPLISHMENTS SINCE BEING ESTABLISHED IN MID-DECEMBER 2003.

January 5, 2004	EAC Commissioners held a planning session and set timetables for the completion of various tasks.
February - March 2004	EAC Commissioners traveled to several states to observe the administration of elections during the Presidential primaries. Locations visited included California, Delaware, Florida, Georgia, Illinois, Missouri, New York, Oklahoma, Virginia, and Washington, DC.
March 23, 2004	EAC held its first public meeting. Commissioners discussed updates on various administrative matters and timetables for future activities. The Commissioners elected DeForest B. Soaries as Chairman, and Gracia M. Hillman as Vice Chair. EAC announced that State plans would be published in the *Federal Register* on or about March 24, 2004, and that it would hold a public hearing within 45 days on the use, security and reliability of electronic voting systems.
March 24, 2004	EAC published all 55 State plans in the *Federal Register*, which began the HAVA required 45-day comment period, after which States are to self certify that they are in compliance with HAVA in order to receive Title II requirements payments.
March 31, 2004	EAC submitted its FY 2005 budget justification to the Senate and House Appropriation subcommittees on Transportation, Treasury and General Government.
April 1, 2004	The Determination Order was transacted to officially transfer property, files and personnel belonging to the Federal Election Commission Office of Election Administration to EAC. This included approximately $500,000 of unobligated funds for FY 2004.

April 4, 2004	With support from GSA, EAC moved into its offices at 1225 New York Avenue, NW, Washington, DC.
May 1, 2004	EAC launched its website at www.eac.gov.
May 3, 2004	EAC released its Human Factors Report on "Improving the Usability and Accessibility of Voting Systems and Products."
May 5, 2004	EAC held its first public hearing on the use, security, accessibility and reliability of electronic voting in the United States.
May 12, 2004	EAC testified before the House Appropriation Subcommittee on Transportation, Treasury and General Government regarding EAC's FY 2005 budget justification.
June 3, 2004	EAC held its second public hearing to identify best practices, problems and transition issues associated with Optical Scan and Punch Card voting systems, and the successes and problems identified with the use of Provisional Voting.

EAC ACTIVITIES

Electronic Voting Security

Before describing our current activities, we will address the issue of Electronic Voting Security. Mr. Chairman, we recognize this issue is of paramount concern to this Committee and others in Congress. It is also of paramount concern to voters across America who want to be reassured that on Election Day they will have unaltered access to a ballot and that once that ballot is cast, their vote will be counted. We have found that a great deal of our work has been shaped by this issue since we took office just a few months ago.

EAC is aggressively addressing the concerns that have arisen from the increased use of electronic voting devices. Time is of the essence and we have made this is a priority issue. We held our first public hearing on the use, reliability and security of electronic voting devices. Following that hearing, we have read many reports and have held discussions with election administrators, computer scientists, advocates, scholars, government officials and voters.

We will issue a report of the hearing very soon and soon thereafter, we will issue useful, practical and adaptable Best Practices Guidelines to election administrators across the country. EAC believes there are many things that election administrators can do to increase the likelihood of the reliability of voting equipment and systems for the November 2004 elections and decrease the likelihood of irregularity.

In the meantime, what we have concluded is that we should not rush for a quick fix for November. The issue of Electronic Voting Security warrants thorough study, careful analysis, and deliberate review. EAC is prepared to do all of that. Among the issues we are considering include vendors allowing election officials to analyze the proprietary source codes of their software with appropriate protections of nondisclosure and confidentiality agreements.

Additionally, we are considering the options available to election administrators and the steps that can be taken by election jurisdictions that use electronic voting devices to identify and implement enhanced security measures in November of this year. To that end, we will issue Best Practice Guidance in time for them to be useful for the November elections.

Other issues we are considering include Voting Software vendors submitting their certified software to the National Software Reference Library (NSRL) at the National Institute of Standards and Technology (NIST) to facilitate the tracking of software version usage. Further, we are exploring options available to EAC to receive information about suspicious electronic voting system activity, including software programming that could be referred to the U.S. Department of Justice Elections Crimes Branch for investigative and prosecutorial action. And, we are considering options to compile information about experiences from the November 2004 elections that can inform the work of the EAC Technical Guidelines Development Committee that will develop new voluntary voting systems standards.

Voting System Standards and Guidelines

HAVA places an important responsibility on EAC to develop and adopt standards and voluntary guidelines for voting systems and voting equipment used in the 55 States. This responsibility includes the testing, certification, decertification and recertification of voting systems hardware and software.

Voting System Standards in the United States evolved over the past 25 years. In 1975, the National Bureau of Standards issued a report on *The Effective Use of Computing Technology in Vote Tallying*. The report cited computer-related problems but it wasn't until 1984, that the Federal Election Commission (FEC) received some funds to develop voluntary national standards for computer-based voting systems.

We believe that it is accurate to say that prior to the establishment of EAC, the federal government did not have a comprehensive program to establish standards and guidelines for the use of voting equipment and to regularly test the equipment and related voting systems. The FEC published the first set of standards in 1990, and updated them in 2002. Part of this work was done in conjunction with the National Association of State Election Directors (NASED), which operated a voluntary program to develop standards with limited funds. Under HAVA, EAC has inherited these Standards, which must be revised, updated, adopted and issued as guidelines to States.

There is an urgent need for EAC to do this work, as is evident by the ongoing debate surrounding the use, accessibility, reliability and security of electronic voting devices, commonly referred to as DREs. In November 2000, more than 100 million voters cast their ballots in about 7,000 local voting jurisdictions at 200,000 polling places. Numerous different voting devices were in place including touch screen DREs, optical scanners, lever machines, punch cards and paper ballots. The problems with voting equipment in the 2000 presidential election are well known and certainly contributed to the enactment of HAVA.

Today, Mr. Chairman, there are still numerous types of voting equipment in place that will be used on November 2, 2004. According to Election Data Services, Inc., it is estimated that the following types of voting equipment will be used by the corresponding percentage of voters when they cast their ballots in November 2004. Optical Scan – 37%; Electronic (DREs) – 31%; Punch Card – 15%; Lever – 15%; Paper Ballots – 2.5%. It is further estimated that 46% of counties will use Optical Scan and 22% will use electronic voting machines.

EAC has an enormous responsibility to work with States to implement HAVA so as to minimize future problems. We accept the urgency of the work that must be done to meet this responsibility and in so doing, we will use a responsible and thoughtful approach.

As mandated by HAVA, EAC will work with the National Institute of Standards (NIST) to establish standards and voluntary guidelines for the use of voting equipment. This is the appropriate role for EAC and NIST. These standards and guidelines cannot be responsibly established without the benefit of research, analysis and testing.

HAVA sections 271 and 281 require EAC to administer grants for research, testing of voting systems and pilot programs to support HAVA implementation and authorizes up to $30 million for this purpose, as is shown in the table below:

Program	Amounts Authorized	Amounts Appropriated
Title II – Voting Technology Improvement Research Grants	$20 million-FY03	$0
Title II – Grants for Pilot Programs to Test New Voting Systems	$10 million-FY03	$0

EAC recognizes that research and testing activities are a critical prerequisite to its establishment of standards and voluntary guidelines and is discussing with the Administration funding needs for FY 2005 to conduct research, analysis and testing. In the meantime, we are developing a HAVA Tool Kit and Best Practices guidelines that will be issued in July to state and local election officials in the 55 States. Further information about the HAVA Tool Kit and Best Practices are described on Page 13 of this testimony.

2004 Activities

EAC is working closely with the National Institute of Standards and Technology (NIST) to engage key constituencies, including election administrators, vendors, advocacy groups and voters, to develop guidelines for voting systems. Through this work, we will:

- Develop recommended solutions in areas critical to ensuring that voting systems are secure, will protect individual privacy, allow voter anonymity, and are accurate and free from fraud and tampering.

- Ensure that voting systems can be tested for compliance to usability and accessibility guidelines and to new standards beginning in 2006, as required by HAVA.

- Review the Federal Election Commission 2002 Voting System Guidelines, conduct an evaluation of independent, non-federal laboratories and accredit laboratories (Independent Testing Authorities – ITAs) to carry out testing, certification, decertification and recertification of voting systems.

In the long run, Mr. Chairman, standards and guidelines need to be evaluated and updated more frequently than once every ten years, as has been done in the past. Additionally, the number of ITAs needs to be expanded. Currently there is one ITA to test and certify hardware and two that test and certify software.

In the meantime, EAC and NIST are working to address today's concerns about voting systems standards. On May 3, 2004, the EAC released its "Human Factors" report on "Improving the Usability and Accessibility of Voting System Products." As required by HAVA, the National Institute for Standards and Technology (NIST) conducted the important research for this report, which we will be use to guide our work. Computer scientists and usability experts at NIST researched and wrote the report for the EAC, as mandated by HAVA. The report assesses human factors issues relating to the process of a voter casting a ballot as he or she intends, then makes 10 recommendations based on that research to help make voting systems and products simpler to use, more accurate and easily available to all individuals—including those with disabilities, language issues and other impediments to participating in an election. The reports main recommendation is for the development of performance-based voluntary standards for the usability of voting systems. Additionally, the report emphasizes developing standards in such a way that would allow independent laboratories to test systems to see if they conform to the standards. A full copy of the Human Factors report is included with this testimony.

In addition to the Human Factors research, EAC is working with NIST on the following activities:

- Formation of the Technical Guidelines Development Committee, of which NIST will serve as Secretariat.

- Development of a recommendation of an International Standard (ISO 17025) Laboratory Accreditation Program for Independent Testing Authorities.

- Development of a NIST voting web site (http://vote.nist.gov) to include relevant Federal Information Processing standards (FIPS) to provide state and local election officials with an initial set of computer security "best practices".

NIST will regularly update the election community with the work of the Technical Guidelines Development Committee at its web site http://vote.nist.gov. They have already initiated a "Key News and Updates" feature accessible from the home page.

We are discussing additional FY05 funding needs with the Administration that would enable EAC to conduct a comprehensive review of the existing standards and guidelines and a comprehensive evaluation of the accreditation process. Additionally, EAC would be able to expedite its process to accredit an increased number of ITAs, which would expand the certification and recertification services currently available to the vendors who manufacture the voting systems. The important end results will be more timely compliance with HAVA and the development of guidelines that election administrators can use when determining what voting equipment they will ultimately use.

Technical Development Guidelines Committee

HAVA establishes a 15-member Technical Guidelines Development Committee (TGDC) that is charged with the responsibility of developing voluntary guidelines for voting systems and voting equipment that will be reviewed by the EAC Board of Advisors and Standards Board and ultimately adopted by EAC.

As established by HAVA, TGDC is to be chaired by the Director of the National Institute for Standards and Technology (NIST). Dr. Arden Bement currently serves as Director of NIST and will therefore chair the committee. In consultation with NIST, EAC has appointed the other 14 members of TDGC, which will include representatives from the American National Standards Institute, the National Association of State Election Directors, the Institute of Electrical and Electronics Engineers, the Architectural and Transportation Barrier Compliance Board (commonly referred to as the Access Board), the HAVA Standards Board, the HAVA Board of Advisors, and individuals with technical and scientific expertise. TGDC consists of some of the best technological experts in the country, as well as dedicated election officials and public representatives.

EAC plans to hold the first meeting of the TGDC in early July. HAVA provides that the TGDC will have a 9-month timetable to draft voting system guidelines. These draft guidelines will then be reviewed by the Standards and Advisory Boards before they reach the EAC for final disposition. With all certainty, public hearings will be conducted on this important issue during the process to insure adequate input by officials and voters alike.

HAVA provides that the Voting System Guidelines will be voluntary but EAC

knows that most States and jurisdictions will follow these guidelines as they develop their own standards for election equipment used in their states.

STANDARDS BOARD and BOARD OF ADVISORS

Critical to the establishment of standards and voluntary guidelines for the use of voting equipment is the participation of key stake holders. The HAVA required establishment of a 37-member Board of Advisors and a 110-member Standards Board provides two vehicles for stake holder input in to the work of EAC and the establishment of standards and guidelines. The first meetings of these two boards are scheduled for June 28 and 29, 2004, in Houston, TX.

Mr. Chairman, we have recently filed the Charters for each of these boards with the offices of this Committee, the Senate Committee on Rules and Administration, and the Committee Management Secretariat of the U.S. Government Services Administration (GSA). The charters specify the Objectives, Duties, Membership, Administrative Provisions and Duration of each board. In summary, HAVA requires that these boards conduct a number of activities, including that they meet; review standards, voluntary guidelines, and best practice guidance to the States; and various other HAVA reports that will be developed by EAC. Additionally, through committees, these boards are to recruit, interview and recommend to EAC, candidates for the position of EAC Executive Director. Both boards function solely as advisory bodies and must comply fully with the provisions of the Federal Advisory Committee Act.

HAVA creatively and appropriately requires specific designation of members to each board to provide broad representation and a wide array of expertise and perspectives in to the deliberations of each group. Board members serve terms and can be reappointed as specified in HAVA. HAVA title II section 215 (f) establishes the boards as permanent committees and EAC is to provide necessary administrative support.

EAC Board of Advisors

Membership on the Board of Advisors shall include: two members each appointed by the National Governors Association (NGA); National Conference of State Legislatures (NCSL); National Association 0f Secretaries of State (NASS); National Association of State Election Directors (NASED); National Association of Counties NACO); National Association of County Recorders, Election Administrators and Clerks (NACRAC); U.S. Conference of Mayors; Election Center; International Association of County Recorders, Election Officials and Treasurers (IACREOT); U.S. Commission on Civil Rights; Architectural and Transportation Barrier Compliance Board. The other members include one representatives from each of the U.S. Department of Justice Office of Public Integrity and the Civil Rights Division; the director of the U.S. Department of Defense Federal Voting Assistance Program; 4 members representing professionals in the field of science and technology, one each appointed by the Speaker and Minority Leader of the U.S. House

of Representatives and the Majority and Minority leaders of the U.S. Senate; and 8 members representing voter interests of whom 2 each are appointed by the Chairs and the Ranking Minority Members of the U.S. House of Representatives Committee on House Administration and the U.S. Senate Committee on Rules and Administration.

The Board of Advisors shall elect a Chair from among its members.

EAC Standards Board

The Standards Board shall consist of 110 members. Fifty-five members shall be State election officials selected by the chief State election official of each State. And, 55 members shall be local election officials selected under a process supervised by the chief election official of the State. As you know Mr. Chairman, under HAVA, references to States include the District of Columbia and all territories.

Regarding the make up of this membership, HAVA also mandates that the 2 members who represent the same state may not be members of the same political party. The board shall select 9 of its members as an Executive Board and HAVA provides of whom not more than 5 may be State election officials; not more than 5 may be local election officials; and not more than 5 many be members of the same political party. HAVA further provides for lengths of terms for service on the Executive Board.

REQUIREMENTS PAYMENTS

HAVA creates new mandatory minimum standards for States to follow in several key areas of election administration. HAVA provides funding to help States meet these new standards, replace outdated voting systems, and otherwise improve election administration. Under these provisions, EAC is required to:

- Distribute Title II "requirements payments" to States and certain other grants to improve election administration.
- Serve as a clearinghouse for information on the administration of elections.
- Conduct studies on matters affecting election administration.
- Promulgate voluntary guidelines for election equipment, in consultation with the National Institute of Standards and Technology.
- Develop a national testing program for voting systems, in consultation with the National Institute of Standards and Technology.
- Provide guidance to States on the administration of elections.

Title I Payments – "Early Money"

Congress has appropriated over $3 billion for HAVA implementation, most of which is for requirements payments to States. In FY 2003, while waiting for EAC to be established, the U.S. General Services Administration (GSA) was directed by Congress to distribute about $650 million in HAVA Title I "early money" to States to be used to improve the administration of elections ($325 million under HAVA Section 101) or to replace punchcard and lever voting equipment ($325 million under HAVA Section 102).

States were required to report to GSA their actual expenditures as of December 31, 2003. The reports were due by January 21, 2004, and as of today, 47 states have submitted the required expenditure reports. GSA is continuing its efforts to obtain the remaining eight reports and now that EAC is operational, we will work with GSA to ensure that all required expenditure reports are obtained.

In reviewing the reports that have been submitted, it is apparent that most of the States have not yet expended the majority of their Title I payments. Since these reports only cover a period ending last December, it is conceivable that a number of States may have made efforts to obligate and expend additional funds since the beginning of this year. GSA reporting requirements for Title I funds only required actual expenditures so we are not able to discern the specific activities conducted by States with the use of Title I funds. Therefore, EAC will request updated financial reports to include additional information. This will enable us to be better informed as to the use of the Title I funds, which we can report to Congress and the general public. We will institute similar reporting requests for the Title II payments.

Title II Requirements Payments

EAC is now working with GSA to distribute $2.321 billion in Title II requirements payments to States for HAVA implementation. To be eligible for these payments, States had to submit written plans to EAC. All 55 State plans were published by EAC in the *Federal Register* on March 24, 2004. Initially, EAC was challenged to find sufficient funding to cover the estimated $800,000 cost of publishing State plans in the Federal Register. GSA assumed this responsibility, which enabled this process to move forward.

Following a 45 day comment period, which ended on May 8, States have begun to self-certify that they are in compliance with HAVA. As of this week, EAC has notified GSA that 25 States have satisfied the eligibility requirements of HAVA section 253 and should receive their Title II payments. GSA is in the process of preparing these payments, which will result in the distribution of approximately $861 million. Appendix C contains a chart listing the 25 states and the payments each will receive.

Two other States have self-certifications that are pending review of their Administrative Complaints Procedures by the Justice Department and we expect to

continue receiving self-certifications from the remaining States during the next several weeks.

EAC has also been working with the Office of Management and Budget, GSA and other federal agencies to establish the various administrative procedures and protocols regarding the disbursement, reporting and auditing of the payments. EAC has significant fiduciary responsibility to assure self-compliance and self-certification by the States. In FY05, EAC will be fully responsible for paying for all costs associated with publishing State plan updates in the *Federal Register* and administering the FY05 requirements payments.

The President's FY05 budget includes a request for $40 million in requirements payments to States of the remaining $639 million that is authorized. Most States have developed their plans to implement HAVA based on their expectation of full funding. The FY05 budget request does not fully fund the authorized requirements payments. EAC anticipates that most states will submit revisions to their plans to adjust for the decrease in funds appropriated for requirements payments.

CLEARINGHOUSE, RESOURCE and GRANT PROGRAMS

HAVA requires EAC to serve as a national clearinghouse of information with respect to the administration of Federal elections. requires EAC to serve as a national clearinghouse and resource for the compilation of information and the review of procedures relevant to the administration of federal elections. The research conducted by EAC to develop voting system standards and guidelines will provide a critical body of knowledge that will help EAC develop and implement several other of its HAVA mandated activities, including:

- Produce voluntary guidance on the implementation of HAVA Title III requirements (voting systems standards, computerized statewide voter registration lists, and public information on provisional voting, voter education, and for voters who register by mail).

- Maintain information on the experiences of States in implementing EAC guidelines for the procurement and use of voting equipment and on the general operation of voting systems.

- Conduct studies and other activities to promote the effective administration of federal elections.

- Administer grants for research on voting technology improvements and for pilot programs to test election equipment and technology.

- Administer grant to the National Student and Parent Mock Election.

- Develop and implement the Help America Vote College Program (described further on Page 15).

- Assume responsibilities previously assigned to the Federal Election Commission under Section 9(a) of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg-7(a), which includes providing States with information on their responsibilities under the law, developing and maintaining the National Mail Voter Registration Form, and reporting to Congress every two years on the impact of the law on the administration of federal elections.

- Make available the results of State reports on the combined number of absentee ballots transmitted to absent uniformed and overseas voters for each general election for federal office, and the combined number of such ballots returned and cast in the election.

- Disseminate to the public, on an ongoing basis, information on the activities carried out under HAVA. This will be done through the Internet, published reports, and other appropriate means.

Basically, HAVA requires two types of research. One area of research is to inform the development of standards and guidance that we addressed earlier in this statement.

THE HAVA TOOL KIT and 2004 BEST PRACTICES GUIDANCE

As part of its Clearinghouse responsibilities, EAC is committed to gathering information regarding "best practices" and "lessons learned," and to disseminate this information to election administrators, advocates and other interested parties in a timely and informative manner. EAC believes there are many things that election administrators can do to increase the likelihood of the reliability of voting equipment and systems for the November 2004 elections, and decrease the likelihood of irregularity. EAC serves as a repository of useful information, which enables it to provide critical guidance and resources to election officials as they prepare for the upcoming General Election.

EAC is developing a HAVA Tool Kit that will offer guidance to election officials. The first set of guidance will be published in early July so that they can be of practical use in time for the November elections. Then, as EAC progresses in its work, the tool kit will evolve in 2005 to include guidelines, guidance, resource manuals and other publications that will be helpful over the long run to election administrators, elected officials, advocates, scientists, academics, the media and other parties interested in the administration and integrity of our election systems and processes.

Best Practices Guidance for November 2004

EAC recognizes that there are many aspects of election systems and practices that have nothing to do with how voting machines function. These areas of election administration, which are covered in HAVA, also need examination and guidance. Two glaring examples are poll worker recruitment and training, which are major challenges that confront most election officials. Also important and to be included in the HAVA tool kit will be information and guidance on voter registration requirements; provisional ballots; absentee ballots, especially for our troops and other American citizens who work outside of the United States; and other aspects of election administration and voter education.

Pursuant to HAVA section 252, EAC will soon issue to Congress a report on "Best Practices for Facilitating Voting by U.S. Citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act," which is being developed in consultation with the Federal Voting Assistance Program (FVAP) of the U.S. Department of Defense.

However, Mr. Chairman, we know that in the midst of the many HAVA mandates that need our attention, the one that cries out for immediate attention is the growing concern about the use, reliability, accessibility and security of the various voting systems that will be administered in 2004. As noted earlier, we believe there are things that the EAC and election administrators can do now to increase the likelihood of the reliability of voting equipment and systems for the November 2004 elections, and decrease the likelihood of irregularity. To that end, EAC will publish Best Practices guidance, the first of which will be available and widely distributed in early July. This guidance will be critical components of the HAVA Tool Kit and is based on testimony we received at our May 5 and June 3 hearings, and thoughtful input from election officials, advocates, academics, vendors and other experts from across the country.

Poll Worker Recruitment and Training

Included in the Best Practices that we will issue this summer will be guidance on the recruitment and training of poll workers. Most Americans do not realize what a huge undertaking is involved in the recruitment and training of poll workers who staff Election Day services. Mr. Chairman, the number of poll workers that must be recruited and trained for each election ranges from about 142 in East Hartford, Connecticut; to 364 in Belmont County, Ohio; to 6,500 in Philadelphia; to over 13,000 in the city of Chicago; to almost 25,000 in Los Angeles County.

Jurisdictions pay relatively small stipends to poll workers from $25 to $125 for what averages to be a 14-our day. Poll workers with the most experience are an aging group and election administrators are challenged to find the numbers of workers they need. To assist in this effort, EAC is considering a National Poll Worker Initiative. We are talking with election administrators, volunteer center directors, corporate executives, national nonprofit leaders and government agency directors to plan this endeavor, which we hope to be able to announce in July 2004.

Integral to this initiative is the Help America Voter College Program currently being developed by EAC. Recently, a California-based think tank[2] released polling data showing that only 35 percent of surveyed college students feel that voting in a Presidential election is a way to bring about change in society. This was a significant drop from 2001, when some 47 percent of college students said their votes could bring societal change. Under Title V of HAVA, the EAC is charged with developing a program to be known as the "Help America Vote College Program." The purpose of this program is to encourage college students to act as nonpartisan poll workers during elections and to encourage State and local governments to use the services of the students participating in this program.

HAVA requires that the Help America Vote College Program be developed by the EAC not later than one year after the appointment of the four EAC commissioners. Specifically, the EAC is to "...develop material, sponsor seminars and workshops, engage in advertising targeting students, make grants and take such other action as it considers appropriate..." to implement this program. Accordingly, the EAC is working now to develop this program, and we will have at least a modified – or pilot program – in place for the upcoming November 2 General Election.

Several local election jurisdictions already have programs in place that could serve as Best Practice models. For example, the Los Angeles County Registrar has been working in for the past several years with a number of local community colleges, most notably the Los Angeles County Community College System, to recruit and train volunteer student poll workers. This program is proving successful in L.A. County and was recently expanded. Likewise, San Francisco and Alameda counties have also been successful in utilizing college and high school students as poll workers. And similarly in New York, the CUNY system successfully implemented a poll worker initiative which organized and trained student poll workers at almost twenty colleges and universities across New York City. EAC continues to identify other currently existing programs that can serve as Best Practice models and will facilitate partnerships with colleges and election jurisdictions.

Of course, guidance and voluntary guidelines are just that, guidance and guidelines to election administrators and others who want to know what can be done to improve our election systems and processes. Therefore, all of EAC's Best Practices guidance will be practical, user friendly, easy for elected officials to adopt as they see appropriate for their jurisdictions, and easy to understand by advocates and other stakeholders. And the practical ideas of the guidance will promote the highest possible standards in the administration of elections and management of voting system security.

Before being published, the guidance will be reviewed by the 37-member EAC Board of Advisors and 110-member Standards Board for comment when they meet for the first time at the end of this month.

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[2] This study was commissioned by the *Leon and Sylvia Panetta Institute for Public Policy* at California State University Monterey Bay.

CONCLUSION

Mr. Chairman, if there is one issue on which Americans have overwhelming agreement, it is that the right to vote may be our most fundamental right. The Help America Vote Act of 2002 established a new role for the Federal government in Federal elections and established the EAC to manage that involvement. We, the EAC Commissioners, are committed to implementing the strict letter of the law, functioning as responsible fiduciaries to protect our Federal investment of funds and creating standards that provide voters with the confidence that our elections are administered with the highest level of integrity possible. If given the appropriate resources, the EAC will become the asset to our democracy that HAVA envisioned.

This concludes our formal statement and we are prepared to answer any questions that you and members of the Committee might have for us today.

Appendix B - Help America Vote Act of 2002 Authorizations & Appropriations

Program	Amounts Authorized	Amounts Appropriated	Amounts Disbursed	Administering Agency
Title I – Payments to States for: • Election Administration Improvement (Section 101) • Punchcard and Lever Machine Replacement (Section 102) Minimum Aggregate Amount Guaranteed to Each State Minimum Aggregate Amount Guaranteed to Each Territory (Amounts unobligated as of September 2003 transferred to EAC for Requirements Payments)	$650 million, as follows: $325 million $325 million $5 million $1 million	$650 million in FY03, as follows: $325 million $325 million (GSA was permitted to take $500,000 of the total for administrative expenses)	$650 million in FY03, as follows: $349,182,262 $300,317,738 (GSA took $500,000 of the total for administrative expenses)	General Services Administration
Title II –Payments to States to meet Act's Requirements (including voting equipment procurement, training poll workers, providing voter education, and improving administration of elections – Section 257(a)) Minimum Payment to States Minimum Payment to Territories	$3 billion, as follows: $1.4 billion-FY03 $1 billion-FY04 $600 million-FY05 .5% of amount appropriated .1% of amount appropriated[4]	$830 million-FY03[5] $1,489,360,620- FY04[6]	$0 FY03	Election Assistance Commission

[4] Subsequent appropriations legislation limited the Territories to receiving no more than the minimum amount.
[5] Funds not disbursed remain available regardless of fiscal year, per Section 257(b).
[6] Of the $1.5 billion appropriated, $1.5 million is for the two Help America Vote student programs, $200,000 is for the National Student/Parent Mock Election, and $100,000 is for GSA administrative expenses. A subsequent federal rescission affecting FY04 funds reduced the requirements payments by $8,839,380.

Program	Amounts Authorized	Amounts Appropriated	Amounts Disbursed	Administering Agency
Title II – Voting Technology Improvement Research Grants (Section 273)	$20 million-FY03	$0	$0	Election Assistance Commission, in consultation with NIST
Title II – Grants for Pilot Programs to Test New Voting Systems (Section 283)	$10 million-FY03	$0	$0	Election Assistance Commission, in consultation with NIST
Title II – Election Assistance Commission (Operating Fund – Section 210)	Maximum: $10 million-FY03 $10 million-FY04 $10 million-FY05	$2 million-FY03* $1.2 million+$800,000 for OEA -FY04*	$0 in FY03	Election Assistance Commission
Title II –Payments to States and Units of Local Government to Improve Access to Individuals with Disabilities (Section 264)	$100 million, as follows: $50 million-FY03 $25 million-FY04 $25 million-FY05	$13 million-FY03 $10 million-FY04	$13 million-FY03	Health and Human Services
Title II – Payments to State Protection and Advocacy Systems To Ensure Full Participation of Disabled Individuals in Electoral Process (Section 292) Minimum Payments	$40 million, as follows: $10 million-FY03 $10 million-FY04 $10 million-FY05 $10 million-FY06 $105,000 ($70,000 and $35,000)	$2 million-FY03 $5 million-FY04	$2 million-FY03	Health and Human Services

* These amounts cannot be carried over for use in subsequent fiscal years.

Program	Amounts Authorized	Amounts Appropriated	Amounts Disbursed	Administering Agency
Title II – Grants to the National Student and Parent Mock Election Organization (Section 296)	$200,000-FY03 Such sums as may be necessary for each of the succeeding 6 fiscal years	$0-FY03 $200,000-FY04*	$0 FY03	Election Assistance Commission
Title V – The Help America Vote College Program (Section 503)	$5 million-FY03 Such sums as may be necessary for each succeeding fiscal year	$1.5 million-FY03* $750,000-FY04*	$0 FY03	Election Assistance Commission
Title VI – Help America Vote Foundation (High School) (Section 601)	$5 million-FY03 Such sums as may be necessary for each succeeding fiscal year	$1.5 million-FY03* $750,000-FY04*	$0 FY03	Help America Vote Foundation

* These amounts cannot be carried over for use in subsequent fiscal years. A subsequent federal rescission affecting FY04 funds reduced the grants to the National Student Parent Mock Election by $1,180 and the funds for the Help America Vote College Program and the Help America Vote Foundation each by $4,425.

Appendix C – Title II Requirements Payments to States

	State	Fiscal Year 2003 Funds*	Fiscal Year 2004 Funds*	Total Payments to State*
1	Arkansas	$7,729,205	$13,869,365	$21,598,570
2	California	$94,559,169	$0	$94,559,169
3	Colorado	$12,362,309	$22,183,056	$34,545,365
4	Connecticut	$9,919,624	$17,799,877	$27,719,501
5	District of Columbia	$4,150,000	$7,446,803	$11,596,803
6	Florida	$47,416,833	$0	$47,416,833
7	Georgia	$23,170,602	$41,577,569	$64,748,171
8	Idaho	$4,150,000	$7,446,803	$11,596,803
9	Indiana	$17,372,175	$31,172,812	$48,544,987
10	Iowa	$8,495,310	$15,244,073	$23,739,383
11	Kansas	$7,661,648	$0	$7,661,648
12	Kentucky	$11,773,250	$21,126,042	$32,899,292
13	Louisiana	$12,549,220	$0	$12,549,220
14	Maryland	$15,201,214	$27,277,216	$42,478,430
15	Missouri	$16,073,033	$28,841,617	$44,914,650
16	Montana	$4,150,000	$0	$4,150,000
17	Nebraska	$4,920,376	$0	$4,920,376
18	New Mexico	$5,110,126	$9,169,664	$14,279,790
19	North Carolina	$23,431,708	$0	$23,431,708
20	Ohio	$32,562,331	$58,430,186	$90,992,517
21	Pennsylvania	$35,992,863	$64,585,967	$100,578,829
22	Texas	$57,504,778	$0	$57,504,778
23	Vermont	$4,150,000	$7,446,803	$11,596,803
24	West Virginia	$5,476,493	$9,827,076	$15,303,569
25	Wyoming	$4,150,000	$7,446,803	$11,596,803
	Total	$470,032,267	$390,891,732	$860,923,997

*Payments to be distributed by GSA in June 2004.

The CHAIRMAN. I assume we will go to the vice chair.

STATEMENT OF HON. GRACIA HILLMAN

Ms. HILLMAN. Thank you. Good morning. I join my colleague in thanking you for the opportunity to be here this morning to talk about the work that we have been doing, the challenges that we have faced, the accomplishments we have made, what we see needs to be done short term and long term.

I will focus my remarks this morning on some of the challenges we faced getting started and talk a little bit more about the Standards Board and the Board of Advisors. And I think that any expectations of the Election Assistance Commission have to be within the reality of our circumstances, that being, when we were first designated as appointees for the commission, naively—and I say naively from lack of information—we focused on what the bill authorized and the authorized numbers. And we were ever so thrilled to note that there would be sufficient funds for us to do research and conduct the operations of the commission.

We were very mindful that we would be somewhat late in being appointed, but felt that we could catch up quickly. And it was a rather rude awakening when we realized that our 2004 appropriation was only $1.2 million, and we really had been focusing on the bigger number of the amount of money that it turns out were requirements payments to the States. And so very quickly when we took office, we realized that we were going to have to do some very careful and strategic planning in order to get ourselves organized and to address the issues that were immediately in front of us, the needs of States, for us to move quickly so they could get their requirements payments to implement their plans, as well as to accept the responsibility of the transfer of the Office of Election Administration from the Federal Election Commission.

And so in the end, we were able to get some things done between January and March because the Federal Election Commission was willing to give us temporary office space and because we worked very closely with General Services Administration to be able to get a rent waiver so that we could occupy offices.

Quite candidly, we were faced with the decision of, do we hire staff or do we rent office space? And so, what good is it to have staff and no place to work? What good it is to have an office and no staff? We were able to work through that, so that we could occupy our offices as of April 1.

And in many respects, some of what we were going through was a little bit like being in two kinds of amusement park activities, one a maze and one the house of mirrors, where we really weren't sure, you know, which direction was going to lead us to where we had to go. We explored many recommendations that were made to us about detail staff and perhaps pursuing supplemental funding and so on and so forth.

And we quickly decided that the best we could do was take the $1.2 million, figure out how we could spend it to implement our activities and move forward. We have had to do a staggering of the hiring of staff so that we still are in a position where we don't have a general counsel and don't have an executive director, but we believe that we can fill both of those positions this summer and will

have sufficient funds to carry us through, assuming that after the end of the fiscal year, when, as we are told 99 percent certain, we will have to operate under a continuing resolution, that the appropriate steps are taken to make sure that we can continue operating during the CR at the level where we are now, and not take us back to the $1.2 million.

And certainly, Mr. Hoyer, if additional funds are able to be made available to us this year, it would increase our capacity to have more rapid response to inquiries from State and local election administration officials as well as to be able to disseminate more information much more quickly and to do some of the public hearings that we would like to pursue.

The chairman talked a little bit about the challenge we had in making sure that the requirements payments could go to the States. And again, it was through a very good cooperative working relationship with the General Services Administration that we were able to get that accomplished.

For the Fiscal Year 2005 appropriation, we did, as the Chairman mentioned, have our hearing with the Appropriations Subcommittee. And we were describing the work that we could do within a $10 million operating budget, having to find ways to find money to do research. I mean, we know that we cannot responsibly fulfill all of our mandates without having research, some evidence-based information, on which we could formulate standards, adopt guidelines. Those are not the kinds of things that we want to do based on anecdotal information. And so we talked with the subcommittee about our need for money for research.

And Mr. Larson, I am very happy to address any specific questions you might have. And we are having those discussions with the Administration, about our needs for FY05.

We did have to spend some time understanding just what our authority was as an independent agency, what that independence meant. We know it means that we don't have the authority to come directly to ask for funds. We do have to do it within the context of the Administration. So we are having those discussions.

Outlined for you in our written statement are the accomplishments that the chairman addressed. And we, quite frankly, are very pleased that we have been able to move forward. We were able to get detailees from other agencies through training programs and the like. And we did receive five staff people when the Office of Election Administration was transferred to us, effective April 1. So we are beginning to put some things in order and do expect that, when we are able to hire an executive director and general counsel, we will move forward.

At the end of this month, there will be the first meetings of the Board of Advisors and the Standards Board. It will be an interesting time, because they are all important stakeholders in the work that we are doing under the Help America Vote Act.

There are 110 members of the Standards Board, and that will be broad geographical representation, because there are two people from each State, the District of Columbia and the territories. The EAC has no input over who is appointed to the Standards Board. That appointment is made by the chief election official of each State. And so we are hoping that, along with that broad geographic

representation, that there will also be good diversity with respect to racial diversity and language diversity, so that we will receive broad input from a diverse group.

The Board of Advisors also within HAVA is very explicit about the representation. And these are not individuals that the EAC appoints, but the EAC is responsible for providing administrative support and working with those bodies. And so at the end of this month they will be organizing their work. The Board of Advisors is to elect a chair. The Standards Board will select a nine-person executive committee, and then both committees are to—I mean both boards are to appoint committees to help us recruit, interview and identify candidates for executive director. And so that is a process that will be ongoing through the fall and I would expect into early 2005.

And so with that, I will conclude my remarks and, again, am prepared to and pleased to answer any questions you might have.

The CHAIRMAN. Other statements?

Now, we do have two votes, one 15-minute vote and a 5-minute vote.

Mr. EHLERS. Mr. Chairman, if I may just interrupt a moment. I apologize for being late. I had another meeting I could not get out of. But I do have an opening statement. And I would just ask unanimous consent to enter that in the record.

[The statement of Mr. Ehlers follows:]

Opening Statement
Vernon J. Ehlers
House Administration Committee
HAVA Oversight Hearing
June 17, 2004

Thank you Mr. Chairman, for holding this important oversight hearing on the Help America Vote Act, otherwise known as HAVA. I want to welcome the four members of the Election Assistance Commission (E-A-C) with us today. Your responsibilities for voting reform support a fundamental part of our society - reliability in our voting system.

In addition to providing funds for states to update voting equipment, HAVA requires better standards for that equipment. During consideration of HAVA in the 107th Congress, the Science Committee, of which I am also a member, worked closely with this Committee to give the National Institute of Standards and Technology (NIST) statutory authority to develop voting machine standards for the E-A-C.

The inclusion of NIST in HAVA was an act of foresight that is now proving invaluable in the debate over technological problems with voting machines. As we are all aware, the controversies associated with direct recording electronic ("DRE" or "touch-screen") voting machines have completely distracted us from the many tasks that must be completed if the voting system reform envisioned in HAVA is to be successful. We need someone to provide rational, trustworthy, technological solutions to these problems, and the experts at NIST are more than qualified to do that.

Yet, in fiscal year 2004 Congress provided no specific funds to NIST for its voting standards work. Despite that, NIST has been on hand to provide the EAC with much-needed technical support and advice on improving the usability, accessibility, and reliability of voting equipment. NIST has done this in the face of layoffs in the very laboratory which has expertise in computer technology and security.

NIST has more than shown its worth in providing trustworthy solutions to seemingly insurmountable problems. I learned yesterday that NIST has been approached by several voting machine vendors about depositing their software code in the National Software Reference Library, a database that promotes efficient investigation of computer crimes. This is a huge first step for these companies, and I applaud them for taking it. Being a scientist and therefore an optimist, I believe this signals a turning point in the search for solutions to the "DRE problem."

I hope we hear more success stories about HAVA implementation from the Commissioners today. I look forward to their testimony.

The CHAIRMAN. Without objection.

STATEMENT OF HON. PAUL DeGREGORIO

Mr. DEGREGORIO. Thank you, Mr. Chairman, Chairman Ney, Ranking Member Larson, Members of the Committee and Congressman Hoyer, thank you for giving me this opportunity to come before you to join my distinguished colleagues seated with me at this table.

Before I begin, I want to thank the Chairman and Members of the committee for their leadership in passing the Help America Vote Act. Obviously, without it, we would not be sitting here today. However, more importantly, without HAVA, there would not be a Federal role in the national leadership we have today on the way elections are conducted in the United States.

As one who conducted elections in Missouri's largest county for 8 years, I can attest to the fact that this Federal role in providing assistance to States and local election officials was sorely needed, and long before the 2000 election, I might add. Furthermore, as one who provided technical assistance on elections to the Russians and 19 other countries for 9 years prior to my appointment as a commissioner, I am grateful to have the opportunity to provide assistance to my own country.

I would like to briefly update the committee on our important work in several areas. Our work on best practices guidance for this November's election, the formation of our Technical Guidelines Development Committee and our work with the National Institute for Standards and Technology. More details regarding this activity can be found in the written testimony submitted to this committee.

As part of its clearinghouse responsibility, the EAC is committed to gathering information regarding best practices and lessons learned and to disseminate this information to election administrators, advocates, other interested parties in a timely and informative manner.

The EAC believes there are many things that election administrators can do to increase the likelihood of reliability of voting equipment and systems for the November 2004 elections and decrease the likelihood of an irregularity.

The EAC serves as a repository of useful information which enables it to provide critical guidance and resources to election officials as they prepare for upcoming general elections. The EAC is developing a HAVA tool kit that will offer guidance to election officials. The first set of guidance will be issued in the next few weeks so that it can be of practical use in time for the November election.

Then, as the EAC progresses in its work, the tool kit will evolve in 2005 to include guidelines, guidance, resource materials and other publications that will be helpful over the long run to election administrators, elected officials, advocates, scientists, academics, the media and other parties interested in the administration and integrity of our election systems and progress and certainly the Congress.

The EAC recognizes that there are many aspects of election systems and practices that have nothing to do with how voting machines function. These areas of election administration which are covered in HAVA also need examination and guidance. Two glaring

examples are poll worker recruitment and training, which the chairman made reference to earlier, which are major challenges that confront most election officials.

Also important to be included in the HAVA tool kit would be information and guidance on voter registration requirements, provisional ballots, absentee ballots, especially for our troops and our American citizens who work outside of the U.S., and other aspects of election administration and voter education.

Pursuant to HAVA Section 252, the EAC will soon issue to Congress a report on best practice for facilitating voting by U.S. citizens covered by the Uniform and Overseas Citizens Absentee Voting Act, which is being developed in consultation with the Federal voting assistance program of the U.S. Department of Defense.

However, Mr. Chairman, we know that, in the midst of many HAVA mandates that need our attention, the one that cries out for immediate attention is the growing concern about the use, reliability, accessibility and security of the various voting systems that will be administered in 2004.

As noted earlier by our chairman, we believe that there are things that the EAC and election administrators can do now to increase the likelihood of reliability of voting equipment assistance in the November 2004 elections and decrease the likelihood of irregularity.

To that end, our best practices guidelines published in coming weeks will be critical components of our tool kit, and based on testimony we received at our May 5th and June 3rd hearings and with thoughtful input over the past few weeks from election official advocates, academics, vendors and other experts from across the country.

As noted earlier, HAVA established a 15-member Technical Guidelines Development Committee that is charged with the responsibility of developing voluntary guidelines for voting systems and voting equipment that will be reviewed by the EAC Board of Advisors and Standards Board and ultimately adopted by the four of us.

As established by HAVA, the TGDC, as it is known, is chaired by the director of the National Institute For Standards and Technology, Dr. Arden Bement. He currently serves as the director of NIST and will chair the committee.

In consultation with NIST, the EAC has appointed the 14 other members of the TGDC, which, by law, includes representatives from the American National Standards Institute, the National Association of State Election Directors, the Institute for Electrical and Electronic Engineers, the Access Board, the EAC Standards Board and the EAC Board of Advisors.

These are individuals with technical and scientific expertise as well as dedicated election officials and public representatives. EAC plans to hold the first meeting of the TGDC on July the 9th. HAVA provides that the TGDC will have a 9-month time table to draft voting system guidelines.

These draft guidelines will be reviewed, as stated earlier, for final disposition by the EAC. With all certainty, the public hearings will be conducted on this important issue by the TGDC during the process to ensure adequate input by officials and voters alike.

HAVA provides that the voting system guidelines will be voluntary, but the EAC is well aware that most States and jurisdictions will follow these guidelines as they develop their own standards for election equipment used in their States.

Now I would like to talk just briefly about our work——

The CHAIRMAN. If I were 10 years younger, I could let you go another 2 minutes and get over to that vote in time. I can run, but I can't jog. If you don't mind——

Mr. DEGREGORIO. Chairman, let me just add, in our statement, we talk about the work with NIST. NIST has provided tremendous support to the EAC over the past 5 months. And we are going to work with them in the next coming months with the technical guidelines development that we are going to do.

The CHAIRMAN. Thank you. We have about 6 minutes left, and the vote will occur, so we will go over.

If we can recess, come back with any additional comments Commissioner Martinez has and then open it up for questions and thoughts. We will be in recess.

[Recess.]

The CHAIRMAN. The committee will come to order. Thank you. We will begin with Mr. Martinez—or we will complete with Commissioner Martinez. Thank you.

STATEMENT OF RAY MARTINEZ

Mr. MARTINEZ. Thank you, Mr. Chairman.

Mr. Chairman, and Ranking Member Larson and members of the committee, I am pleased to be here to join my colleagues this morning to give an update on our progress with respect to the implementation of the Help America Vote Act. I will be very brief in my comments so that we can get to some questions and answers and talk in greater detail about our work.

As you know, Mr. Chairman, HAVA creates new mandatory minimum standards for States to follow in several key areas of election administration. For example, HAVA provides funding referred to as requirements payments to assist States in implementing several uniform nondiscriminatory election technology and administrative improvements. These include new voting system standards, provisional, and voting information requirements, voter identification requirements, and the creation of computerized statewide voter registration lists.

To be eligible for requirements payments under Title II states have to submit to the EAC written State plans indicating how the requirements payments would be used. All 55 States—and, of course, the four U.S. territories and the District of Columbia are referred to in HAVA as States—all 55 State plans were published by the EAC, as Chairman Soaries has reported, in the Federal Register on March 24, 2004. And following that, there was a 45-day mandatory comment period that ended on May the 8th of 2004. And at that point States began submitting statements of certification as required to the EAC.

Over the course of the last several weeks, the EAC has attempted to provide appropriate oversight and due diligence to the distribution of these Federal funds. For example, the EAC has been working with many States to resolve questions that have arisen re-

garding the certification process and distribution of the Title II funds.

In addition, the EAC has worked closely with other Federal agencies such as the Office of Management and Budget to resolve issues pertaining to procurement, reporting, and auditing protocols that are normally applicable to the Federal funds awarded to outside entities such as State and local governments.

In short, Mr. Chairman, this has already been reported by Chairman Soaries, in the 5 weeks since the end of the 45-day comment period, the EAC has now processed statements of certification from 25 States. And, accordingly, by next week GSA, at the direction of the EAC, will begin making requirements payments to these 25 States totaling well over $800 million. We expect to process additional statements of certification from States in the days and weeks to follow, and, in fact, we have some already in the pipeline that we are trying to process today.

Another critical responsibility of the EAC is to serve as a national clearinghouse for the compilation of information with respect to the administration of Federal elections. In order to successfully fulfill this requirement, Mr. Chairman, the EAC has worked diligently in its first 6 months of operation to develop close ties not only with our main constituency, which are election administrators and supervisors throughout the country, and, of course, other State and local government organizations, but, equally as important, with advocacies, civil, and voting rights organizations, and other interested parties that are interested in assisting us with implementation of the Help America Vote Act.

Shortly after assuming office last December, all four EAC Commissioners traveled to various local jurisdictions throughout the country in order to personally observe the administration of primary elections, to visit with election administrators, poll workers, and voters, and to see firsthand the implementation of various HAVA requirements such as provisional voting. One of the States that I visited was Oklahoma, which was implementing a type of provisional voting for the first time as a result of the requirements in the Help America Vote Act.

Moreover, the EAC has held, as we know, two public hearings, one here in D.C. covering DRE machines and another just several weeks ago in Chicago, Illinois, where election officials, representatives of advocacy organizations, and members of the general public were invited to submit oral and written testimony regarding HAVA implementation issues.

In addition to travel and public hearings, Mr. Chairman, the EAC Commissioners as a group and through the individual efforts of each of the Commissioners have been attending various functions, meetings, and annual conferences in order to educate and inform the public regarding the important mission of the EAC. Since various advocacy and civic organizations have also worked hard on issues central to HAVA implementation, the EAC has also made a concerted effort over the course of the last several months and since we have been appointed in December to be informed of their experiences and perspectives regarding HAVA implementation.

Finally, because coordination with other Federal agencies is critical, members of the EAC have held planning sessions and various

meetings with agencies such as the Departments of Justice and Defense, and the Administration on Developmental Disabilities within HHS.

The EAC remains firmly committed to continuing this important outreach and to soliciting input from the general public. The valuable information we receive will inform us as we make critical recommendations to State and local governments regarding election administration, and as we give guidance on implementing the various election reform measures required by HAVA.

I thank you, Mr. Chairman, for the opportunity to say a few words. And of course I would welcome your questions on this or any other issues regarding HAVA implementation.

The CHAIRMAN. Thank you.

Normally we are pretty relaxed here about the time, but I am going to hold myself to the 5 minutes, and that way we all 4 can get 5 minutes in, in case members have to come and go. There are other questions I want to ask, and I know others do, but we will just hold to the 5. That way everybody gets a round in, and then we can continue with no problem.

Again, I appreciate your testimony. As far as my question, when do you anticipate—anyone can answer if you want to or decide who wants to answer. When do you anticipate issuing the best administration practices with respect to electronic voting equipment? I mean, do you have a date or a guesstimate?

Mr. SOARIES. Commissioner DeGregorio is working closest to that process. Our expectation is to be prepared by mid-July to distribute that information.

The CHAIRMAN. I think one other thing that also concerns me, and we can go into this later in the rounds of questioning, is that we had an issue with the Defense Department. They were supposed to have this program, and it was all pooled—I think it was roughly $20 million. I am not sure that—I don't know what happens after that. I am not asking for an answer now in my time, but I think I will come back to that.

I am assuming you plan in the near future for the provisional ballots—to issue some guidelines for those. Do you have an idea of the time frame for that?

Mr. DEGREGORIO. Mr. Chairman, those will be issued at the same time we issue the best practices for voting systems in early to mid-July.

The CHAIRMAN. Okay. As far as most States, I am assuming, have asked for a waiver from the implementation of the computerization until 2006. Is that correct?

Mr. SOARIES. Forty-one have asked for waivers.

The CHAIRMAN. Do you think the other nine are going to do it, or do you think they will be asking, too?

Mr. SOARIES. No. I think in varying stages. We have some States that have already had computerized voting databases, but they had to upgrade their hardware. In another State, we have an upgrade of the software. I think they are in various stages of implementation, but most, if not all, will be doing some work to get to 2006. No one is in a perfect state yet.

The CHAIRMAN. As far as the poll workers, and I know the Chairman mentioned it and a few of the other Commissioners, I think

that is a real critical part of this. It is something we looked at, it is something Congressman Hoyer, Senator Bond and Dodd and everybody, McConnell and everybody all looked at that issue. One of the reasons we also devised the high school and college bipartisan program—and Congressman Hoyer came up with the college end, and I came up with the high school end—was to encourage the participation. Maybe the students get the day off and they can go to the polls and help, and then you are getting people that are going to be poll workers down the road in their communities, so I am hoping that program gets started.

Now, I know from our end, I don't believe that the head of the high school program has been appointed yet, which we need to take care of that. That is going to be our duty to push that. I would hope that is an integral part, I would assume, down the road. Any comments on those two programs?

Mr. SOARIES. The poll worker initiative both for high school students, college students, and corporate support is critical to the future voting in this country. I have not met a jurisdiction yet that believes they have sufficient numbers of poll workers. Again, the complexity of the voting process requires even more poll workers. And it is just—it is not in the culture that being a poll worker outside of the partisan political apparatus is important to do.

We are attempting everything we know to do, including trying to get some celebrities who have high name recognition to volunteer to be poll workers. If we don't put this on the map and make it a part of the culture, then voting in the country is at risk.

The CHAIRMAN. Also, I think when we start to talk about DREs and machines—and I am of this era. If I hook up a VCR—my son Bobby or my daughter Kayla, they hook up the VCR. I won't even talk about computers and what happens, but younger people, they don't have the fear of it. I think, too, as we go down the path of equipment and technology, I think having these younger people now who don't fear machines as much—that is not to say that people who are older can't learn. I mean, we have talked to poll workers, and they are starting to become comfortable now with the idea. When they first heard about it, they were fearful of it. They are becoming comfortable. But I think as time goes on, having the younger people in there will—I think will be a very good thing.

In my remaining 39 seconds, also, how about the—it is very, very important—the persons with disabilities, who have a form of disability, and they push so hard for the one machine per precinct. How do you think that is going, the one machine per precinct?

Mr. SOARIES. We are finding local jurisdictions' willingness to cooperate, participate. Again, the controversy surrounding the use of DREs in general is beginning to weigh against some of the advocacy for accessibility for people with disabilities. And I think a proper role for the EAC is to make sure that we keep that balance, that we have maximum security and maximum accessibility.

The CHAIRMAN. Thank you.

The gentleman from Connecticut.

Mr. LARSON. Thank you very much, Mr. Chairman. And, again, let me thank the panelists.

Let me also recognize that in the audience today we have Joe Crangle from New York, who is on the EAC Advisory Board as well, and I just wanted to acknowledge his presence.

And let me cut right to the chase with respect to, I think, one of the overarching concerns that I have is whether or not you have adequate funding for the administration of the EAC. And as was pointed out both in testimony and by Mr. Ney and Mr. Hoyer, this is an ongoing concern of mine. And given the broad tasks that you have been given, do you feel that you have sufficient funding? And where are you with asking for additional funding for research?

Mr. SOARIES. I am going to ask Vice Chair Hillman to explain my one-sentence answer.

The EAC is best described as being fiscally challenged, and Vice Chair Hillman will break it down for you.

Ms. HILLMAN. The short answer to your first question is, no, we do not have sufficient resources. As the committee knows, EAC is authorized to have up to $10 million for operating, and for 2004 we were appropriated 1.2-. When we received the transfer of the Office of Election Administration, along with that came the balance of their funds, which was about $500,000. So what we scaled out was that we are operating in fiscal year 2004 with a budget of—annual budget of about $2 million.

And so we quickly began exploring whether there was any possibility to get supplemental funding, and we always identified that somewhere between 1 and 2 million dollars in additional funds wouldn't do for us what 10 million would have, but it would have at least enabled us to be able to respond a little more quickly to some of the challenges.

With respect to money for research, we—I don't want to say that we gave up on money for research, but we recognized that with the time remaining, we couldn't do the kind of research that would allow for analysis, testing, and so on and so forth. But the National Institute of Standards and Technology did give us for $1 million what they could do right now this summer that would be available to jurisdictions in time for the November elections. So we do have, you know, in place programs that could be immediately implemented if we had additional funds.

For 2005, we identified what we could do with $10 million in research funds. Now, there were authorized up to $30 million that could be available for research monies, none of which has ever been appropriated. And so we were saying to the subcommittee and the Administration, you know, we really need the $10 million. What we had originally done was be so modest as to come in and say, okay, well, if we only get 10 million for operating, we will take 30 percent of that and apply it to research, and we can do a little bit. We were encouraged to ask for what we thought we could use and need. So what we are discussing with the administration is 10 million for operating and 10 million for research.

And the research would be programs that we would be working with NIST on, looking at the equipment and coming up with recommendations for standards that we should adopt. And we are behind on that because I think that was supposed to happen within 9 months, you know, after the TDGC had been formed.

Mr. LARSON. Well, as Mr. Hoyer noted in his opening statement, this is something that Mr. Ehlers was critical in both providing the impetus and the influence of having the relationship with NIST. And to say that you are fiscally challenged is an understatement, I would say, and it is important that the committee hear this so that we can seek to help address these critical areas that are so important to us.

Another question. You had a hearing back in May, and I would like to know where the EAC is with respect to DRE security and the debate, and where do you see that all going? And, most importantly, because this is a question I get asked all the time, even if legislation such as the Holt legislation were to be embraced, could it be effective by—put in place and be effective by November for this election?

Mr. SOARIES. I will take the latter question first.

The answer is no, that the expectation that legislation passed would result in every DRE voting device in the country being retrofitted with a printer is—it is beyond what is practical. One, we don't know the cost, and we don't have sufficient projections as to the reliability of printers. We don't know the protocols for training poll workers. We don't know the implications for backup systems. We just—we don't know enough yet. And on May 5th, when we talked to experts with various perspectives on this issue, we came away with the understanding that we just don't know enough yet.

But the larger—the larger answer to you, Congressman, is that when you frame the debate the way it has been around paper verification, you create an assumption that paper is the solution to the only security risk involved. Experts have told us that if one can manipulate the results of a DRE that doesn't have paper, one also could manipulate the results of a DRE that does have paper.

And then we have the issue of verification being one that is more complicated than paper. There is a school of thought that you have a voter-verified paper trail, but then there is another body of research that talks about the voter-verified audit trail. And the audit trail without paper can be made possible by cryptography, and that a cryptographic solution is much more secure than a paper solution because we have had such a history of paper.

What we have said is that all of these varying views compel us to get the technical process in place, get the money to do the research.

Mr. LARSON. Which is why the funding is so important.

Mr. SOARIES. Exactly. And the position of HAVA was that the Commission would be in place by about March of 2003, that the research would be done by December of 2003. And so when the States got the money, along with the money would come the guidance. We were in the position of having to release the money without having the money to do the research, and so the States will have over the $2 billion in Federal funds before we can study sufficient to give them guidance on using the money.

Mr. LARSON. In keeping with the admonition of the Chair, I will get back with other questions. But thank you, sir.

The CHAIRMAN. We will come back.

Also, I just wanted to note, I know the gentleman from Connecticut was putting something in the record, I think, for one of

the—I don't know if it was for the American Association of Persons with Disabilities.

Also, without objection, I want to put something in the record. I think that the New York Times article written by Jim Dixon was over the top on impugning the integrity of the association of the National Federation of the Blind and one of our U.S. Senators, who I hate to even print the names because I don't want to have them again impugned—I think it was impugning—it is okay in this democracy to have a difference of opinion. I think it just simply impugned them over them having an opinion. Therefore I am going to, without objection, put some further remarks in the record.

[The information follows:]

INFORMATION TO COME?

The CHAIRMAN. The gentleman from Michigan.

Mr. EHLERS. Thank you very much, Mr. Chairman. And thank you for having this hearing.

Just for background, in case you didn't know, I happen to be the scientist on the committee and the person who wrote the part of the bill dealing with the technical aspects. That bill came out of our Science Committee and then was folded into this.

I have to confess to a lot of chagrin about what has happened. Obviously, the research should have been done first before we buy several billion dollars worth of voting machines, and that was the intent. And I had advocated originally that we have a set-aside out of the money for the computers. That would automatically fund your operation. That got lost in the appropriations process. The authorization we did was sufficient, but the appropriations weren't.

I do want to add also that I also attempted to persuade the recipients of the $3 billion approximately that they should be willing to let us use a portion of that, and I will never forgive them for saying no when we were giving them that much money for their purposes and their job, and they said, no, we don't want you to use any of it for research. And that is, I think, a gross error on their part and unforgivable.

The points I want to make. I think the issues that have to be dealt with in voting are usability; in other words, the human factors. Make sure it is easy to use. And I have rebelled against the people who say all we have to do is train the voters. That is not the point. You cannot train people who are going to do something once, maybe twice a year and expect them to remember it. The machines have to be good enough so that no training is required, literally idiot-proof. And so usability is very high on my scale of things that have to be achieved,

Accuracy, of course, is very important, and that is relatively easy to achieve using electronic devices. It is actually fairly easy to achieve using punch cards if people simply operate them correctly. And that relates to maintenance and testing. And punch cards are fine if you maintain and test them, but every system has to be maintained and tested.

Verifiability is very important, and that gets to the point you just raised a moment ago, Mr. Chairman. I have not joined in sponsoring the bill to require a printout even though I think it would be a good thing, because it was on the basis that this would some-

how verify that the vote was cast accurately. And I personally can program a computer to print out precisely what the person put in, but store in the memory something different, and that is where the opportunities for fraud come in.

I have been surprised in serving on this committee that fraud is still a very viable issue in this Nation. I have been led to believe as I was growing up that once we got rid of Tammany Hall and all the other various machines, that elections now were just slick and clean. They may be slick, but they are not all clean. It depends on the part of the country you are in. And fraud is still a problem in a number of ways, and you can commit fraud more easily with electronic machines in many cases than you can with the old system. And so we really have to emphasize the security, and that means, as part of the testing procedure, you really have to, before each election, test and make sure that the machines are recording accurately and verifiably.

I think a key factor is going to be also to have skilled technical help available in the polling places. Now, that is very difficult. It is hard enough to find poll workers, but to find poll workers who understand electronic instruments and can verify they are working accurately is very difficult. And I really think we—and Mr. Hoyer has mentioned this, too. I think it is an excellent idea that we should simply call upon the high-tech industries in this country to donate employees with full pay to be in the polling places, to ensure that the machines are working properly and accurately, and not simply depend on the poll workers who frequently do not have a technical background.

All of these have to be done, but above all you have to have the money to do your job right, because I think yours is the most crucial part of the entire enterprise. And if the work is done properly and setting standards for all the factors I have mentioned, we are going to have fair and free elections and with equipment that operates properly. If your background work doesn't get done right, and you don't have the resources to do it, we are throwing several billion dollars down the drain again, and we will come back with the same problem a few years from now.

I have thrown a lot at you, but I would appreciate, even though the time is basically up, any comments you would like to make in response.

The CHAIRMAN. If we could, because I want to do that. If we could go to the gentlelady, and in 5 minutes, if you could come back and answer that.

Mr. EHLERS. Okay.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman. And it is very critical that we have this hearing this morning. Thank you and the Ranking Member for convening this.

And I thank you all for being here and in your positions as you are starting out on a deficit yourself in terms of lack of funding.

I think the Chairman stated that there were 41 States—our Chairman raised the question, and I think you responded, Mr. Chairman, that there are 41 States that have opted out of the computerized system. Am I correct in that? Because I was kind of reading and then listening. Is that a fair assessment of that question he raised and you answered to that?

Mr. SOARIES. The question was, how many States have asked for a waiver for this year to construct their statewide computerized voter registration database?

Ms. MILLENDER-MCDONALD. Okay.

Mr. SOARIES. And the deferment is to meet the 2006 deadline. So that——

Ms. MILLENDER-MCDONALD. That is what it was. And it is 41.

Mr. SOARIES. Forty-one. Yes.

Ms. MILLENDER-MCDONALD. So would they be perhaps going back to the paper ballot, I suppose? Is that what they are going back to?

Mr. SOARIES. No. This doesn't have to do with voting devices. It has to do with the management of the voter lists.

Ms. MILLENDER-MCDONALD. I got you. Okay, fine.

In terms of polling places, that has become extremely problematic especially in the minority communities. Are you—and you stated that, Mr. Chairman, insufficient number of persons, a lot of ill-trained personnel. How does this Commission work in that regard? What will be your role in that?

Mr. SOARIES. In the selection of polling places?

Ms. MILLENDER-MCDONALD. Selection, training, ensuring that there is not disenfranchisement because of what we saw in Florida. We see it in California, and you see it in Texas and a lot of other places.

Mr. SOARIES. Our role formally is to establish the areas of great concern and areas that are legally mandated, and share immediately best practices with election officials around the country and communities that can hold the election officials accountable to these best practices. In other words, if you are going to use provisional ballots, which every district is, here is how you get it right; here is how you ensure that it is consistently executed in a legal way and in a fair way. If you are going to train poll workers, we have in our best practices where—a section on the training of poll workers. If you only train for about 20 minutes, you probably won't get it right. If you train for 45 hours, you will probably get no one to sign up. And so what we are doing——

Ms. MILLENDER-MCDONALD. And may not get it right either.

Mr. SOARIES. Exactly.

Commissioner Martinez and I met with a group of disability groups last week to talk about how we as a Commission can encourage election officials to identify more polling places that are accessible for disabled. It is one thing to say that the machines have to be accessible, but the question is, what about the polling place itself, whether or not it is accessible? And so in a larger role we have more of a bully pulpit where, because of our legal mandates, it puts us in a position to raise other issues that may not be in the legislation, but have to do with the effective management of election practices.

Ms. MILLENDER-MCDONALD. Either one of you can answer this question. So, have you had meetings with registered recorders, clerk, or have you had meetings with city clerks who handle some of this, or State personnel? Have you had those hearings, meetings? Are you anticipating that, what, 5 months out? Certainly you had

such a short window getting started, it seems to me it is rather late.

Mr. MARTINEZ. To answer your question, Congresswoman, yes, we have had lots of meetings where we have tried to make ourselves very visible and available to election administrators, to folks who have direct responsibility for the administration of our elections, but also, as I said in my opening remarks, to other interested parties, to advocacy groups, for example, who have a history of monitoring the administration of elections. We want to make sure that we garner as much experience and perspective as possible as we implement the Help America Vote Act.

The other answer to the question that you raised is that, you know, as the Chairman said, the power of this Commission is really the power of persuasion, the power of the bully pulpit. We are essentially a nonregulatory agency, but it is important for us to remind States and local governments that they are coming into a lot of unprecedented and really historical Federal funds for use of improving the administration of Federal elections. It is incumbent upon us to use our bully pulpit to make sure that this is not about just replacing technology, it is also about the people side of election administration.

So the money that is flowing, the Title I money that has already been out there for a while, section 101 and 102 money, and now the Title II funds that are about to flow can be used for the things like poll worker training, nonpartisan voter education, so that if you purchase new technology in a jurisdiction, you want to make sure that the folks who are going to be using that technology are comfortable with that technology and not intimidated by the fact that they are using a brand-new voting system.

So, appropriately some of these Federal funds can be used, again, on the people side of election administration. It is not all just for the technology, as important as that is. So I think it is important for us to use our bully pulpit to be able to educate the public and the election administrators about the use of these funds.

Ms. MILLENDER-MCDONALD. Mr. Chairman, I don't know who is running my clock, but that is a quick red light that I saw. I did want to raise one more question.

Mr. EHLERS [presiding]. Actually I think it was no quicker than mine.

Ms. MILLENDER-MCDONALD. Really. Thank you.

The CHAIRMAN. I will let you have another minute.

Ms. MILLENDER-MCDONALD. Please.

I just wanted to raise the question about the last election. We know that the Justice Department had some of their personnel going out, monitoring, overseeing elections, and rightfully so, because we did not anticipate but did have the Florida debacle. Do you have any oversight monitoring role in this as well, and will you enforce such laws as civil rights laws and the Disability Act?

Mr. SOARIES. We have a very cooperative working relationship with the Justice Department. One of our early meetings in January was with the Civil Rights Division of the Justice Department. We probably speak with them every single week. Because the Justice Department under HAVA has enforcement authority for the implementation of HAVA, we have some responsibility as it relates to

auditing the use of funds and ensuring that States are compliant with HAVA in the use of those funds, and so it is more of a cooperative relationship than it is oversight.

But HAVA does explicitly state that States have to be in compliance with the Voting Rights Act of 1965, the Americans with Disabilities Act. And to the extent that we are working with the 8,000 election officials and we have information about possible violations, we have established a methodology for triggering the Justice Department to investigate and, if necessary, prosecute. There are a few consent decrees that have already been entered as relates to HAVA violations, and we have collaborated with Justice over those issues.

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

Mr. EHLERS. Thank you.

And I will return to my questions and ask for your reactions and comments to my statements.

Mr. SOARIES. Thank you, Mr. Chairman.

We worked with the National Institute of Standards and Technology from day one. And as you know, HAVA requires that we release a human factors report that would be conducted by NIST. NIST gave us the draft of the human factors report for us to ultimately pass on to this committee, and I think I can speak for all of us, we were alarmed at the paucity of research that has been done in usability. I don't think the average American knows in comparison to other industries how weak the usability research is on voting devices. And as you rightfully state, one can be secure, a machine can be accessible, but if no one has studied font size, positioning of ballots, whether vertical or horizontal positioning affects the outcome of an election, then we really are groping in the dark as relates to usability.

The human factors report lists 10 recommendations, which we accept. We pass it on to Congress. But all of them require the funding that is needed to do the proper research. And we have been challenged, as it were, because on the one hand we are responsible as public officials to inform the public as often as we can and as honestly as we can. On the other hand, if we say everything we know, it could frighten people to death. And so we are constantly looking for the kind of support that your questions lead to to ensure that we can do the work that we have been charged and tasked to do to make sure we have integrity.

The maintenance and testing, though, is something I want to mention for a moment. If you take away the EAC and remove HAVA, the fact is technology is advancing more rapidly today than it ever has, and no one has been able to assess the true maintenance needs, the true testing procedures, and ultimately the true cost of replacement for the new voting technologies. If we, the EAC, aren't in a position to offer the country that kind of information, we may find that the money the Federal Government is spending today will commit the States to technologies and upgrades that they don't have the resources to sustain over the long haul. If you buy a personal computer today, you buy it knowing that 3 years from now you will need a new one. And we have yet to even begin to discuss the 10-year, 15-, 20-year impact, fiscal impact, that is

generated by the use of the $3 billion that we will use to seed voting technology upgrade in the country.

So there are so many unknowns that those of us who felt we might only serve a year or two probably now understand that this is probably a 10-year mission.

Mr. EHLERS. Thank you. And, frankly, the good news part of it is that because these do not have to be very sophisticated machines, that you probably don't have to replace the machines every 3 years, but you may have to upgrade the software every 2 or 3 years. That is a generally less expensive proposition. So if you get some good basic computers to begin with, I think you can then probably get a 5- to 7-year lifetime out of them simply by upgrading the software. But it is still an important maintenance and testing problem; every election you are going to have to go through it.

Any others wish to respond? Yes.

Ms. HILLMAN. On the issue of poll workers, just getting back to the issue of high school and college students. I just want to note that one thing we are keeping an eye on and collecting information on is that in some States and local jurisdictions, law requires that the poll worker be a registered voter in that jurisdiction, age 18 or older. And so in some places it precludes the involvement of high school and college students. But there are many areas where they certainly can get involved.

Mr. EHLERS. Yes. And in fact, that is why I suggested getting high-tech companies to donate employees for a day, which presumably they would be old enough and wise enough.

Any other comments?

Mr. DEGREGORIO. Mr. Chairman, if I might add to our Chairman's comments. I know you are talking about testing and maintenance of election equipment by election officials, but there is also the testing and certification of election equipment itself, which we know a lot of new election equipment will be purchased. And we have a crisis in that area because we really only have three labs in this country that are doing it, one to test and certify hardware, and two to test and certify hardware—software. And we are working very closely with NIST on this problem to try to move the process forward to certify more labs in this country that can test equipment, because there is a bottleneck developing, and it takes many months for these labs to certify this equipment.

And so we are moving forward, but, again, the funding shortage has made it difficult to move that as fast as we would have liked.

Mr. EHLERS. It is a very valid point. And when we wrote the bill, we would have been quite pleased to allow NIST to also do it until enough private supplies were up, but of course the private sector objects to the government taking away business from them. So we will see whether the private sector comes up with the requisite number of certifiable labs that do the work, and we may have to readjust if they don't.

Mr. MARTINEZ. I will simply speak very briefly to the overall point that I think that you made, Mr. Chairman, and that is that the lack of funding has many implications for our Agency. One of the statutory obligations that we have under Title III of the Act is to issue guidance to States and local governments that are implementing the various administrative and technical requirements,

the election reform measures that are in Title III of the Act. And one of the consequences of our being fiscally challenged, of course, is that while we are doing best practices and we are developing as much guidance as we can within the context of our budget and limited infrastructure, the fact of the matter is that there are some Title III requirements that have to be put in place and that started January 1 of this year, provisional voting, voter ID requirements, voter signage, and administrative complaint procedures. But there are other big ones coming up now that States have asked for a waiver on that you are very familiar with, the computerized voter registration database, and the various election—the various standards for election equipment that are in section 301 of the act, that we are unable to do anything more than at this point, as Vice Chair Hillman has stated, than really recite anecdotal things that we have heard as opposed to giving research-based guidance to States on how to implement the various election form measures. That is a critical point. We just don't have the means at this point to do anything other than how we are going about it, which I think is a very responsible and the best possible way that we can, but it is within the context of some very severely limited funds.

Mr. EHLERS. Well, we all recognize the problem, and none of us are happy about it. We tried to prevent it, but the vagaries of writing law sometimes lead to strange results. But we will continue to work on and try to improve it.

My time has expired. Mr. Larson, do you have further questions?

Mr. LARSON. Thank you, Mr. Chairman. Yes.

First, just to so I am clear on this, from an administrative standpoint, how much more money would be needed in this current year, in the year 2005, in order for you to be able to perform your functions? And has there been a suggestion of bringing up a supplemental in order to make that happen, make that a reality?

Ms. HILLMAN. Sure. For 2004, the administration will not introduce the supplemental on our behalf. We estimated that, given where we are in the fiscal year, 1 million—somewhere between 1- and $2 million would enable us—and this, of course, assumes that NIST is still prepared to do the work that it had scoped out—would enable us to respond to the needs of the States and local jurisdictions. But that really is predicated on when the money comes. I mean, obviously, if the money came in August, it would be very, very difficult for us to do justice to that kind of money.

And for fiscal year 2005, what we identified was the need for $10 million in operating, plus an additional $10 million for research. That would allow us to do some catch-up, to try to catch up on what didn't happen in 2003 and what didn't happen in 2004, but needs to be in place in 2005 so that the States can meet the mandates of the law.

Mr. LARSON. So, ASAP, you would need a supplemental, for 2004, between 1- and 2 million; and approximately 20 million, 10- for administration, 10- for R&D, going forward.

How does this relate to the questions, Mr. Chairman, as you raised earlier? I think everyone is concerned, and I can certainly understand everyone's desire to have a paper trail given the results of the 2000 election, and general concerns about making sure that your vote counts. Obviously every citizen wants to see that. You

pointed out that the—even under the best circumstances, the Holt bill, for example, could not be implemented in time for this election. And also, there is a myriad of problems that are presented with that as well.

I was intrigued by the notion of encryption. I think that that clearly interests me, but that also brings the point, the fact that we don't have the money to go through this process to take a look to see how that is going to work.

Having said all that, and given your charge and given the election in November of 2004, what steps are we taking to assure voters that their vote is going to count?

Mr. SOARIES. Here is the direction that we are pursuing as it relates specifically to security and electronic voting. One, we are asking every jurisdiction that uses these devices—which is about 700 in the country—to identify security measures that they have never taken before that they can take now. Parallel monitoring is one such step. In four counties in California, we had parallel monitoring, and everyone was happy with the results, including the secretary of state. In some areas, it is the chain of custody that needs to be upgraded to ensure that the voting devices are more secure than they had been. And so that is one.

Two, we are preparing to ask every vendor, every manufacturer of voting software to make the source code available to the contracting authority so that any election official in the country can, with the assistance of the computer science community, analyze the source code that is being used in their jurisdiction. And it is kind of a halfway step between the open code, which some people have said should make every source code public, and the proprietary interests that the vendors have said is theirs. And we believe the vendors will cooperate, so it is the analysis of source code.

The third is brand new also, and that is that we are prepared to ask every vendor to participate in the NIST National Software Reference Library. Every other software manufacturing industry in the country does that. Here is what that accomplishes. It means that the Federal Government will have on file the software being used by every certified vendor. That software can be analyzed so that you can do pre- and postanalysis. And if anyone suspects that a different software was used on Election Day than the software that was certified, then having hashed that code means you can analyze and compare the code to what was submitted and what was used. And if we detect that there is a difference, then you can investigate the implications of that difference. We have heard from NIST as of yesterday that two vendors have contacted NIST to say they would like to participate.

The fourth thing we have done is begun talking with the Department of Justice. While many——

Mr. LARSON. Excuse me, I didn't mean to interrupt. And if the Chairman will allow it, in the Times editorial—and when they did the analogy between slot machines in Las Vegas and voting, part of what you are saying would go a long way towards addressing some of the voter protection concerns that were raised in that analogy; would it not?

Mr. SOARIES. It certainly would, because what it does, it makes available to the public information about software certified and

software used. It would be similar to a human fingerprint analysis. But in all——

Mr. LARSON. Should we mandate that? That was my question. Should we mandate that, or should we, as was——

Mr. SOARIES. We believe the industry will respond favorably and will participate in our request. There are signs already. NIST is already negotiating two nondisclosure agreements with vendors who have voluntarily said this is a good idea. The vendors have an interest in having a more transparent process to protect the image that they have invested heavily in.

But on that point of the software, you know, in many ways comparing voting technology software to slot machine software is apples and oranges if for no other reason that the money—not the money that comes out of the machine, but the money that the industry has to do the research. And these machines are used 24 hours a day, every day, and it is—I think the media is responsible for helping us not spread fear.

Mr. LARSON. But that is why I was asking about the need—and, again, these are all attached to money—for us as a legislative body to consider putting in as we move, as we get more technologically advanced, what safeguards—again, a problem which will require study, but some of which seem to be common sense and practical. And you seem to be——

Mr. SOARIES. But we can do the software registration today with no extra money in time for November to assure America that we are looking more carefully at the software, the technology, and thus the voting than we have ever looked before.

The other thing I think we have to remind people, Congressman, is that tampering with elections is a crime. Congressman Ehlers suggested that he was hoping fraud would disappear. In my other life I am a clergyman. Should fraud disappear, I would be unemployed, so I—I need some fraud. But the fact is fraud is a crime. Tampering is a crime. And I will be addressing all of the assistant U.S. attorneys later next month on an initiative that the Election Fraud Division of DOJ is launching with us, and that is to motivate people to let us know when they detect crimes.

It is interesting to find the vulnerabilities in voting software in the classroom. That is an appropriate academic exercise. But when you leave the classroom and you come to the community, that is a crime; and a person can go to jail in this country for 20 years, and we intend to remind the country that violators of that law will be prosecuted. The way we deter crime in this country is through prosecution, and we don't want that part of the discussion to be left out, because the fact is vulnerabilities may exist, but to the extent that they do, you can go to jail if you exploit those vulnerabilities.

And then, as I mentioned earlier, the collection of data is critical. We think that many vendors have had the luxury of this, of nondisclosure. And so if you buy a car or any other kind of device, there is data somewhere that tells you the likelihood of that car having certain problems in certain areas. We have no such data with voting devices. And the fact that we don't have the data allows certain problems to fly beneath the national radar, and we would like to put it on the national radar.

Mr. LARSON. I agree.

Ms. HILLMAN. Mr. Larson, I would also like to note that we want the American voters to know that we are working to issue best practices on the other machines as well, because 37 percent of voters will be using optical scans, and 15 percent will be using punch cards, and about 15 percent using lever machines. And issues regarding maintenance, storage, you know, training of poll workers with respect to those machines, we know the punch card story very, very well. And, in fact, about 46 percent of counties in this country will use the optical scan as compared to 22 percent using electronic voting machines. So in addition to the work we are doing on the DREs, we are keeping an eye on the information on the other equipment as well.

Mr. LARSON. Thank you.

The CHAIRMAN. One other question, and I will be glad to also yield to Members who have additional questions, but one question that I have, and I apologize, I had to make a phone call, but I don't know if this was brought up. However, about the military voting, I just wanted to hone in on it a little more. I was recently over in Afghanistan, I spent time in Kabul and I have been on board an aircraft carrier with my colleagues in Bagram twice, and the issue came up time after time after time with our men and women in uniform about what is going to happen to them.

In the Help America Vote Act, we had focused some language—I remember that I had each State have a designated person that would be focusing on those ballots. It was one designated person. Then we had the voting assistance officers where we stressed to the Defense Department to have those officers over there, or wherever our soldiers are stationed to make sure they again assist. I wondered what, with the Federal Voting Assistance Project—and although the technology part of it just absolutely vanished, we know what happened with that—but with the Federal Voting Assistance Project, do you have any comments on that? Do we need to do more? Or do we have to see how this runs? I mean, it is important, because we are at war, and of course a lot of questions come up, are their votes going to count?

Mr. DEGREGORIO. Mr. Chairman, let me answer for my colleagues on this issue, because I have focused on this. Early on we met with the Federal Voting Assistance Program folks at the Department of Defense to talk about this issue, because, as mandated by HAVA, there is a report that was due on April 29th to the Congress just on this issue of best practices. And we are hopeful to get that report out in the coming weeks.

I have been disappointed that it has taken so long to do this. We certainly don't have the staff to do it. But the Department of Defense Federal Voting Assistance Program certainly has a lot more funding than we have had to do this work, and I have impressed upon them the need to get this done and get it done quickly so it can be utilized this year by election officials throughout America. And I met with them just Monday of this week to go through the second draft, and we are hopeful that that report will be issued to the Congress and to the President by the end of this month.

But it is a very important issue, and the research that has been done certainly shows that there needs to be more in this area, because there actually are very few States that have appointed a co-

ordinator to focus on this issue statewide, and I think that is wrong. And one of our best practices recommendation is going to be to impress upon the States that they need to do this and do it now.

The CHAIRMAN. Do you have the ability to basically send out a notice to the States, to the Secretaries of State that you need to appoint someone? Do you have the ability to do that.

Mr. DEGREGORIO. We have the ability to recommend to do that.

We don't have any rulemaking authority for the States, as you well know. But we do have the bully pulpit authority. We will use that in our Best Practices Report to encourage the States to do that, because it has been done in several States very successfully. I think it is incumbent upon every State in this Nation to do that.

Also, we are going to recommend that each local official have a point person that is focusing on the military and overseas voters, because it is—I know it is, as a director of elections, that we always in my office had a person to do that, to make sure that we were getting the ballots out on time. You may recall in 2000, that election did show a very lack of concern by many election officials to get those ballots out in time so the military voters can get them back to be counted accurately, counted on a timely basis. So we are focusing on that issue.

The CHAIRMAN. I mean, we want no one left behind. The provisional voting, I think, is one of greater things, that way, you know, you walk in, you are not told, "Well, your name is not on the list, go away," and therefore being disenfranchised. As you know, the vote is held. If it is deemed that the mistake was made, you are accurate, it is counted. If not, it is shredded. I think that goes a long, long way to stop anyone from being disenfranchised.

But in a time of war, of course, you can also understand with our soldiers over there, those men and women are asking over and over, too, because of the distance away they are. So I do want to mention that.

I want to see if there are other questions. I also want to comment, I know Congressman Hoyer has been working with Senator McConnell and Congressman Istook. And you need the money. That is something we need to push. You need the money. I think you are doing a great job under horrifically thin resources. We authorized $10 million. We authorized it. That gives you $10 million. That needs to be, I believe, pushed to make sure that check is written, and you can get the resources to help you. So I think you have done a remarkable job, all of you, under very strained resources.

Mr. LARSON. I would just like to follow up with a question that I—again, I want to thank Vice Chair Hillman for pointing out as well, with regard to the 37 percent that will use optical scan; and 15, punch cards; another 15 percent with levers.

And I want to commend the chairman for talking about the need to enjoin the Justice Department with regard to fraud. I would also hope that we are able, with the Justice Department, to focus on those who were intimidated from coming to vote, and exercise their franchise and working with them, whether it is through a memorandum of understanding or otherwise, and would be interested in your comments on how you see that unfolding as well, because I think they are two important aspects.

Mr. SOARIES. Certainly, Congressman.

The overarching theme, as we see it, of HAVA is balancing this issue of access and fraud. And while much emphasis is put on fraud, equal emphasis has to be put on access, and we know there are various barriers to access.

One of my personal concerns is that, as we approach November with a heightened sense of security for the country, that our response to securing the country does not have the unintended consequence of being perceived as intimidation at the polls. In my community, I guess all of my life, every election day there has been some assertion of intimidation. Members of my church often complain about intimidation. And some is explicit, and some is implicit.

And so we, in our talks with Justice, are attempting to ensure that the Justice Department is poised to support all of those issues that we have to wrestle with that guarantee free and fair elections throughout the country.

Mr. LARSON. Anyone else care to comment?

Mr. MARTINEZ. I would make a quick comment on this topic. That is that it is also incumbent upon—I mean, I agree with our chairman that we have been working closely and building an appropriate partnership with the Department of Justice on these very important issues.

You know, it is also important that DOJ and that, to the extent that we are involved, that current—that new provisions that are as a result, that the result from the Help America Vote Act are properly implemented. So, as I have said, there are some election reform requirements in Title III of the Act that States could not waive, which are very important.

For example, provisional voting, which we talked about already, we have talked about voter signage, where jurisdictions have to put up a notice at every polling place now that essentially says—it is not a voter's bill of rights, but in a sense it kind of is—that you have an administrative complaint procedure that you can seek redress if any of your HAVA rights are being violated, and it is related information.

So it is important that DOJ is working with jurisdictions to ensure that these new requirements are properly implemented. And I have every confidence that DOJ is doing that and making sure—and another provision would be, for example, jurisdictions that are under certain sections of the Voting Rights Act, so if you have to have certain signage, for example, in Spanish or in a different language, that those voting rights provisions apply to the requirements that are now part of Federal law as a result of the Help America Vote Act.

So my experience and I think our collective experience in working with DOJ is that they are moving aggressively to make sure that jurisdictions are implementing the laws that are currently on the books when it comes to access like provisional voting and related issues.

Mr. LARSON. Well, thank you for performing the yeoman's tasks that you are about.

Do you intend to have any more hearings yourself? I know the hearings you have had have been very successful.

Mr. SOARIES. We would like to have one more hearing between now and November focusing specifically on the poll worker issue. We would like to put a face on the issue. We would like to demonstrate the need. We would like to give poll workers a chance to discuss the experience, elections officials an opportunity to talk about their gaps. And then we would like to get some of those colleges and corporations that are willing to help us to talk about how they are going about using their resources to help fill that gap.

And so we are assuming that we can have one more public hearing, that it will be focused on poll workers, because we really think that that is going to make or break the election in November.

Mr. LARSON. Thank you.

The CHAIRMAN. I want to thank our ranking member, the gentleman from Connecticut, for his participation and the amount of time he has put in on this issue.

I want to thank all four of you commissioners for being here, and also for the job you are doing.

I mean, we can debate all of these issues we want here, but if people don't feel that they had a true rightful election, and had their chance at the ballot box, then all of the other issues I think get very, very grey. I think that what you are doing is wonderful for the entire country, and I appreciate your time today and appreciate the job you are doing.

I ask unanimous consent that Members and witnesses have 7 legislative days to submit material into the record and for those statements and materials to be entered in the appropriate place in the record. Without objection, the material will be so entered.

I ask unanimous consent that the staff be authorized to make technical and conforming changes on all matters considered by the committee in today's hearing. Without objection, so ordered.

Having completed our business, we are adjourned. Thank you.

[Whereupon, at 1:25 p.m., the committee was adjourned.]