MEETING

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SECRETARY OF STATE

HAVA STATE PLAN ADVISORY COMMITTEE

SECRETARY OF STATE'S OFFICE

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRPERSON REYNOLDS: Okay. Let's get started.

I have Kaye Kaufman who works with me on a lot of HAVA stuff that I do, contracts, claims, and so on and so forth. So Kaye's got a few housekeeping details relating to travel reimbursement and -- but I wanted to mention, kind of importantly I think, that the bathrooms --

(Laughter.)

CHAIRPERSON REYNOLDS: -- if you need them, as you exit this Board room --

COMMITTEE MEMBER JOHNSON: I know where they are.

CHAIRPERSON REYNOLDS: As you exit the Board Room, you go around the rotunda and pass the stairwell, if you will, and look down, there's a long hall, and it's got a sign that says notary on it. Go down that long hallway, which is kind of to your left, and about 100 feet down on the right are the bathrooms. So that's where those are.

Kaye.

MS. KAUFMAN: Okay. On travel reimbursement, we have an unfortunate little rule that we have to have your Social Security number before we can pay you. So, Ardis, you don't need to listen, and Michael you don't need to listen, we've got you on file. But most of you we do not have -- yeah, we know your number.

(Laughter.)
COMMITTEE MEMBER LOGAN: We have Mike on file, too.

(Laughter.)

MS. KAUFMAN: Anyway, what I want you to do so that I don't have to track you down or find it later in order to get you paid, if you will, on the left side of the blue binder is this confidential page. And if you could just put your name and your social on it, fold it over, put it in this confidential envelope, seal it -- I don't want to see it -- give it back to me, and I will take it directly to accounting. And they have a secure area where they keep this information. It's only for audit purposes. I do not want to see anybody putting their Social Security number on that blank -- on the travel expense claim form. That expense claim goes through several desks before it gets to the secure area of accounting.

I don't want to see anybody putting it on there, that's why we're asking you to do this, it's for your own protection. We don't want to see your social lying around where I might see it, because I get tempted.

(Laughter.)

COMMITTEE MEMBER JOHNSON: If you're not going to be asking for reimbursement, then you don't need to, right?
MS. KAUFMAN: If you're not going to be asking, you don't need to do this.

Okay?

COMMITTEE MEMBER JOHNSON: Okay.

COMMITTEE MEMBER FENG: You should do poll-worker trainings.

(Laughter.)

MS. KAUFMAN: I do poll-worker training observation. And I give these people feedback; that's why Becky doesn't like me. Even though her poll workers are marvelous, she still doesn't like it.

Anyway, I gave you some travel tips. It lists the receipts that you're to save, which include any parking fees you may have paid, if they're over $10; any toll fees, taxi, or airport shuttle fees. Airfare, if it's not booked through the Secretary of State, we'll need your itinerary and your ticket.

And then costs that are reimbursed without receipts are probably vehicle mileage. It's at the rate of 55 cents a mile. The form, the TEC form is electronic, and it automatically computes everything into the right line. So I am going to be sending you the electronic version at the end of the day, so you'll have it by tomorrow when you're ready to do your claim. But I wanted to show you what the form is like. The second page gives
you the instructions of how to fill it out.

And I'm done.

Thank you very much.

CHAIRPERSON REYNOLDS: Secretary of State Bowen.

SECRETARY OF STATE BOWEN: I come into the middle? Where's the easiest place to --

CHAIRPERSON REYNOLDS: Actually, we were thinking down there, because I'm going to do a PowerPoint shortly, and that's kind of what I was thinking, if you'd like to sit -- you're the Secretary.

SECRETARY OF STATE BOWEN: Well, thank you all for being here and for agreeing to do this. It's very important. And I know it's time consuming and I know that you're not making the big bucks for doing it, but it's something that -- we have a lot more information now than we did when we started with this process of creating the State plan.

So Chris is going to go through with you a little bit of the history, because you'll see that there's some differences between the original plan and what's happened now. Some of that has come about because the EAC has provided additional guidance about how HAVA funds can be spent. And I think in all the cases, the guidance has been to further restrict what will be done with HAVA funds.
And the second is that because we have to pay for the statewide voter registration database, which is a HAVA-mandated plan, the legislative -- the LAO and the people in the capitol and the Governor's office are very interested in having us basically spend every -- any penny of HAVA money that we can on the statewide voter registration database, because otherwise it's paid for with State general funds.

But the State plan does have some -- and as you know, the State plan has to focus on the HAVA Title III requirements, which are deploying voting equipment that complies with Section 301, ensuring that voters have provisional voting rights, including a mechanism to allow them to determine if their vote was counted and if not, why not; to post information on voting rights and instructions on how to vote at the polling place, including providing a sample ballot; and then, as I mentioned before, creating a statewide voter registration database.

California was, I think, ahead of many states in some of these things. We already had fail-safe voting. Many states didn't have any mechanism for provisional or fail-safe voting. But I'm wanting California to go further now and to look at the patterns of provisional ballots that were not counted, so that we can see if we
have a particular kind of issue, we need training, we need
better voter education, because we're running into a
particular problem, and, frankly, to see if there are some
jurisdictions that have big percentage differences in how
many provisional ballots they count. Again, because
that's a potential signal that there may be something
going on in the way that provisional ballots are handled
or in the standards that are provided in the -- whether a
provisional ballot is counted or not should not depend on
what county or city you're voting in. It ought to be the
same no matter where you are in California. It won't be
the same across the country, because we don't have a
single standard for many of our election criteria.

So today I think we'll have an open discussion to
understand from all of you what the priorities of the
stakeholders are. We definitely need input from our
counties. And thank you to all our registrars who are
here. Because if we don't understand the practicalities
of making things work, we can recreate a great plan that
doesn't actually accomplish anything. And I think all of
us want to set things up in a way that actually
accomplishes something.

So we'll take that discussion, look at what is
and is not permitted by HAVA, what the EAC has done to
provide guidance in the last six years, and then attempt
to create a -- we won't attempt to, we will create a State
spending plan that complies with the HAVA requirements as
elucidated by the EAC. And it is my hope that we will
have a consensus on how our State plan and our State
spending plan should work.

I think that the next step should be for me to
officially swear each of you in as a member of this
advisory committee.

And I think you have an oath for you. Does
everybody have it in a form in which they can understand
it, deal with it, read it, or if you're like me, you
probably have signed -- some of you have signed enough of
these, so that you could probably give it in the middle of
the night if I woke you up.

(Laughter.)

SECRETARY OF STATE BOWEN: So this is -- And I
think we'll do this together. There's no point in doing
14 separate oaths for this.

If you were being sworn in as the President of
the United States, I would swear you in separately.

COMMITTEE MEMBER LOGAN: And you'd get it right.

(Laughter.)

MS. KAUFMAN: She's showing favoritism.

SECRETARY OF STATE BOWEN: Yeah, it's favoritism.

But for the office -- this is for the Office of
Member of HAVA State Plan Advisory Committee.

And if you will repeat after me, and you can raise your right hand, if you want to. I don't think that's a requirement. Sometimes it makes you feel more official.

I, state your name --

PROSPECTIVE COMMITTEE MEMBERS, "I,(state individual names in unison) --

SECRETARY OF STATE BOWEN: -- do solemnly swear --

PROSPECTIVE COMMITTEE MEMBERS: -- do solemnly swear --

SECRETARY OF STATE BOWEN: -- that I will support and defend --

PROSPECTIVE COMMITTEE MEMBERS: -- that I will support and defend --

SECRETARY OF STATE BOWEN: -- the Constitution of the United States --

PROSPECTIVE COMMITTEE MEMBERS: -- the Constitution of the United States --

SECRETARY OF STATE BOWEN: -- and the Constitution of the State of California --

PROSPECTIVE COMMITTEE MEMBERS: -- and the Constitution of the State of California --

SECRETARY OF STATE BOWEN: -- against all
enemies --

PROSPECTIVE COMMITTEE MEMBERS: -- against all

enemies --

SECRETARY OF STATE BOWEN: -- foreign and
domestic --

PROSPECTIVE COMMITTEE MEMBERS: -- foreign and
domestic --

SECRETARY OF STATE BOWEN: -- that I will bear
true faith and allegiance --

PROSPECTIVE COMMITTEE MEMBERS: -- that I will bear
true faith and allegiance --

SECRETARY OF STATE BOWEN: --- to the
Constitution of the United States --

PROSPECTIVE COMMITTEE MEMBERS: -- to the
Constitution of the United States --

SECRETARY OF STATE BOWEN: -- and the
Constitution of the State of California --

PROSPECTIVE COMMITTEE MEMBERS: -- and the
Constitution of the State of California --

SECRETARY OF STATE BOWEN: -- that I take this
obligation freely --

PROSPECTIVE COMMITTEE MEMBERS: -- that I take
this obligation freely --

SECRETARY OF STATE BOWEN: -- without any mental
reservation --
PROSPECTIVE COMMITTEE MEMBERS: -- without any mental reservation --

SECRETARY OF STATE BOWEN: -- or purpose of evasion --

PROSPECTIVE COMMITTEE MEMBERS: -- or purpose of evasion --

SECRETARY OF STATE BOWEN: -- and that I will well and faithfully discharge --

PROSPECTIVE COMMITTEE MEMBERS: -- and that I will well and faithfully discharge --

SECRETARY OF STATE BOWEN: -- the duties upon which I am about to enter.

PROSPECTIVE COMMITTEE MEMBERS: -- the duties upon which I am about to enter.

SECRETARY OF STATE BOWEN: All right. Very good.

We don't have any controversy on the blogs about whether the oath was administered properly.

(Laughter.)

SECRETARY OF STATE BOWEN: So just one other point. I've come to the conclusion that the market -- the voting system market is never going to do an adequate job of providing accessible voting equipment. That's a different question than if a polling place accessible and that the process be open.

And so I have already begun to push, at the
federal level, for us to do basically the equivalent of sort of a Manhattan Project for accessible voting. If we aggregate among the states the need for a wide variety of types of adaptations, I think that we actually can meet the goals of the Help America Vote Act to allow every voter to vote privately and independently in a way that spends a lot less money than if each state tries to do it. And that also allows us to gain from the experiences of the other states.

So that doesn't mean we won't work on all of these issues in California, but I just think that there's no single -- people ask me about the disabled community, and there really is no single disabled community. The needs that we're talking about range from people who might have dyslexia, to somebody who uses a cane, to people who need much more; that they need reading assistance, they need assistance with their hands. It's such a broad range of kinds of things that we need to accommodate.

And in much of the rest of the world, so much of this is already done. And that's the part I think that's frustrating to me, when I look at all of the adaptive technologies and the things that we do, a whole broad range of things. And then how we've applied that or not to people's engagement in the political process, particularly voting, that there's a real disconnect.
And that's part of the reason that I looked to see how we can do this in a way that includes all 50 states and, of course, Guam, Puerto Rico. But that would also have the advantage of bringing all of the work that's done to the voters in all of those jurisdictions, rather than relying on their particular state to get it done.

So it's always my hope that California will lead the way on any given matter or topic, and we're generally pretty good at that. I hope this will be no exception.

Does anybody have any questions for me?

Okay. I'm sure you will later.

Chris will be your tour guide in this maze. I was very grateful that he agreed to continue working on these issues. When you have an office where there were 5 Secretaries of State within 5 years, that makes it harder to provide a consistent direction and focus. And Chris really has been our rock when it comes to HAVA and his relationship with the counties as well as with the businesses. He's got a good understanding of what's happening in each of our 58 counties.

So with that, Chris, I'll let you go on to your PowerPoint.

And if people want to pass their oaths down or attests; Debbie, do you want to collect --

VOTER EDUCATION & OUTREACH SERVICES DEPUTY
DIRECTOR O'DONOGHUE: There's a little type so I need to redo them.

SECRETARY OF STATE BOWEN: Never mind.

VOTER EDUCATION & OUTREACH SERVICES DEPUTY DIRECTOR O'DONOGHUE: But I will take them. You're sworn in, but you are signing another document. We do get a do-over in this.

SECRETARY OF STATE BOWEN: Debbie, when I go to the dry cleaner sometimes, I put a tag on something that says, "Do over." We don't have that for elections.

MS. KAUFMAN: Except in Minnesota.

(Laughter.)

SECRETARY OF STATE BOWEN: Even in Minnesota it looks like they might finally be done. It doesn't mean they're done with litigation, but that's the right that we have in this country.

All right. So I will sign them when the right oath is signed.

So I'm going to listen to the PowerPoint.

(Thereupon an overhead presentation was presented as follows.)

CHAIRPERSON REYNOLDS: Thank you, Secretary Bowen.

I do have a quick PowerPoint that I'd like to go through to cover some of the next items in the agenda.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
And I'd like to start with a quick overview of the planning process in abbreviated fashion.

COMMITTEE MEMBER MacDONALD: Chris, before you start, I don't really know everybody here.

CHAIRPERSON REYNOLDS: Oh, I'm sorry. We did skip the portion of the meeting. And, Ms. Huffman, welcome.

SECRETARY OF STATE BOWEN: Oh, and Alice is not sworn in. Everybody but you.

COMMITTEE MEMBER HUFFMAN: I went to the Board of Education.

SECRETARY OF STATE BOWEN: We'll get you sworn in.

CHAIRPERSON REYNOLDS: So thank you for reminding me, Margaret. I did intend for there to be an introduction of the members. And so if they wouldn't mind, we have collected your biographies with your input, and so we will be using those as a part of the State plan. But if people could introduce each other.

I'm Chris Reynolds. I work for the Secretary of State. I'm the Deputy Secretary of State for HAVA activities.

This is Kaye Kaufman who works with me. She's an elections specialist. Laura Baumann, from our Elections Division, an attorney there. Jane Howell, also with the
Elections Division. Debbie O'Donoghue, who works in the administrative office and handles a number of things, including voter education and access issues.

And Tess, who's last name escapes me --

SECRETARY OF STATE BOWEN: Mason-Elder.

CHAIRPERSON REYNOLDS: Thank you. Mason-Elder.

How could I forget that.

But if we could introduce the -- if the members could introduce themselves to the group, starting with Ms. Feng.

COMMITTEE MEMBER FENG: I'm Kathay Feng. I'm with California Common Cause.

COMMITTEE MEMBER BAZYN: Ardis Bazyn with California Council of the Blind.

COMMITTEE MEMBER CARSON: Chris Carson with League of Women Voters of California

COMMITTEE MEMBER LOGAN: Dean Logan, Registrar, Recorder, County Clerk for Los Angeles County.

COMMITTEE MEMBER MARTINEZ: Rebecca Martinez, Clerk, Recorder, and Registrar for Madera.

COMMITTEE MEMBER ALVAREZ: Michael Alvarez, a Professor at Cal Tech.

COMMITTEE MEMBER GOLD: Rosalind Gold with the National Association of Latino Elected and Appointed Officials. That's NALEO Educational Fund.
And, Secretary, I just would like to take this minute to thank you so much for your partnership on our voter engagement, or our Ve-Y-Vota, our Campaign for 2008. It was a very helpful partnership for us.

COMMITTEE MEMBER MacDONALD: Karin MacDonald, UC Berkeley.

COMMITTEE MEMBER HUFFMAN: Alice Huffman, California State NAACP President and national board member, and one who does not know her way around Sacramento.

(Laughter.)

COMMITTEE MEMBER JOHNSON: Margaret Jackson with Disability Rights California.

CHAIRPERSON REYNOLDS: And I see we're joined by Eugene Lee.

COMMITTEE MEMBER LEE: Hi. I'm Eugene Lee of the Asian Pacific American Legal Center.

CHAIRPERSON REYNOLDS: And unfortunately, Neal Kelley, the Registrar of Voters from Orange County's flight was delayed, and he should be here shortly we hope. And Ana Acton, who is with the FREED Living Center has not yet arrived.

Those are the other members of the advisory committee.

So with that, I think I will get started on this
PowerPoint presentation, which I hope is brief, but may raise some questions. So I'll ask at the end if there are any questions about this.

As I said, I'm going to start with an abbreviated description of the planning process to kind of give an overview. The actual place in HAVA where you can find a description of this process and the requirements for it are in Sections 254 through 256.

But in an abbreviated fashion, what state plans are intended to do are to describe how states will use funding, provided under HAVA, to meet Title III requirements, how elections officials and poll workers will be trained, and how information will be provided to the voters, and generally a lot of information about how the state plan is to be managed.

For a state plan update, it must also describe how the state succeeded in carrying out previous plans and any changes between the prior plan and the update.

This advisory committee, which must include the chief elections officials from the two most populous voting jurisdictions in the state, and that would Los Angeles County and Orange County, is appointed for the purpose of advising the Secretary of State on crafting a preliminary state plan update.

Once a preliminary state plan update has been
completed, it must be made available for a 30-day public
comment period.

Public comments must be taken into account when
preparing the final version of the state plan, which is to
be submitted to the U.S. Election Assistance Commission,
which is the oversight authority for HAVA.

Following the public comment period, the state
plan update is published in the Federal Register for
30 days by the Election Assistance Commission.

After that publication in the Federal Register,
the state can submit a certification to the EAC, the
Election Assistance Commission, and the state is then
eligible to receive new HAVA Title II funding. Right now
it's about $24.1 million in new funding that's available.
And that funding is provided to the states for the purpose
of meeting Title III requirements, which I will describe
in more detail momentarily.

--o0o--

CHAIRPERSON REYNOLDS: First, I think it's
important to distinguish between the funding sources
within HAVA and understand what funds are being budgeted
in the state plan update and to understand the
restrictions on the use of funds.

HAVA funding is provided in three distinct
sections for specific purposes, although there is some
overlap. Section 101 funding is the so-called early money, that could be used to meet Title III requirements, educate voters and election officials, or for improving the administration of elections, among other purposes. This one-time funding was used extensively by California for these purposes.

Section 102 funding was an incentive program to replace punch card voting systems and can only be used for that purpose. These funds have been expended.

Section 251, Title II funding, is the funding that is included in the state plan budget. It's the funding we're talking about today and can be used only for meeting Title III requirements, except in limited circumstances, under a so-called Minimum Requirements Payment Program, which I'm going to describe in detail momentarily -- or more detail momentarily.

So it's important to remember that the funding we're going to discuss today is for meeting Title III requirements.

--o0o--

CHAIRPERSON REYNOLDS: One important focus for the State plan, therefore, is meeting Title III requirements. And as the Secretary described, those are deploying voting systems that comply with Section 301 requirements for accessibility and second-chance voting,
if you will, allowing voters to detect errors before they
pass the ballot; two, ensuring that provisional voting
rights, including the availability of the free access
system that the Secretary mentioned, which will enable a
provisional voter to determine whether their ballot was
counted and if not why not; and providing voter
information at polling places under Section 302.

Finally, there's a requirement under Section 303
for creating a statewide voter registration list. And
I'll call it a list as often as I can for Karin
MacDonald's benefit, because she does operate the
database -- the statewide database at UC Berkeley for
purposes of redistricting. But the statewide voter
registration list or database is a requirement under HAVA.

The plan must also describe how election
officials and poll workers will be trained and how
information will be provided to voters on HAVA
requirements. There are restrictions, however, on the use
of Title II funding to accomplish these tasks, because the
EAC has determined that these are not, strictly speaking,
Title III requirements. Some of those restrictions speak
to the fact that we have implemented HAVA, and some of
those costs, according to the EAC, are no longer allowed.

For example, poll-worker training. EAC guidance
states that poll-worker training is allowable on a
one-time basis when new voting systems are deployed that meet HAVA requirements or is allowable if minimum requirements payment funding is used.

I'll be referring to this minimum requirements payment funding frequently. So if people have questions about it, we can talk about it in greater detail.

But a minimum requirements payment program is a statewide allocation of $11.6 million, and it's a subset of the Title II funding. Generally speaking though, the funds for poll-worker training cannot be an ongoing use of HAVA dollars. Counties have to use local funds for that purpose on an ongoing basis.

The state plan must include cost estimates for each of the activities the state will carry out, with a focus on the cost of Title III requirements. And the most expensive Title III requirements are purchasing voting systems that comply with Section 301 requirements and establishing the statewide voter registration list or database.

There's also a prohibition against the use of federal HAVA funds to supplant the cost of preexisting activities. In California, those preexisting costs are meeting provisional voting rights and providing voter information at the polling place. In a sense, because California did this before HAVA, it was penalized from a
funding perspective in that HAVA funds couldn't be used here. On the other hand, California voters did have this information assistance before voters in many other parts of the United States, and this frees up HAVA funds to be used for other purposes.

States are also required to develop performance measures to evaluate the implementation of the State plan. California has some preexisting performance measure, and has taken other steps to evaluate the implementation of HAVA, such as election-day observation and poll-worker training observation programs, but more work should be done. And it's hoped that the Advisory Committee can provide some assistance here.

There is also a requirement that the state explain how Title I funds were used to meet the requirements of the state plan. Again, California relied heavily upon Title I funds to meet the requirements of the initial state plan.

So there's a need for this state plan update to explain how the elements in the previous plan were accomplished, to the extent they were, and to realign the state plan with where we are now.

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CHAIRPERSON REYNOLDS: In other words, to assess our progress by explaining how the state implementation of
HAVA -- did implement HAVA in the midst of some challenging circumstances, that the Secretary alluded to. For instance, the resignation of the Secretary of State, brief tenure of an acting Secretary of State, then the appointment of a new Secretary of State who assumed office with about nine months left to the January 1st, 2006, deadline for full implementation of the HAVA Title III requirements.

So this plan needs to refocus the state's efforts on meeting Title III requirements and explaining how those Title III requirements are being met, explaining what steps were taken to train election officials and poll workers and provide information to voters, explaining what performance measures are in place now and how additional performance measures will be developed, providing a direction for the future while recognizing HAVA implementation is now underway, and securing new HAVA funding directed at appropriate and allowable uses of the new funding.

--o0o--

CHAIRPERSON REYNOLDS: It's important to recognize that HAVA implementation is underway and has been since 2005 and to explain how the goals of HAVA are being met, while keeping in mind that it was not possible to follow some of the provisions of the initial state
There are reasons why the initial state plan wasn't closely adhered to. One, it was a planning document that was written at the same time the EAC was being appointed and established and before EAC policies were adopted that eventually precluded some elements from being carried out as described in the state plans, particularly as it relates to voter education and poll-worker training.

Two, the administration that drafted the state plan decided, once it started to implement the state plan, to change its priorities. After discussions with the counties, the Governor's Budget Office and representatives from the legislature, a spending plan was submitted to the legislature in 2005. That spending plan, which gives the Secretary of State the legal authority to spend HAVA funds, was different from the state plan budget. It appears that the administration preferred to use money in different ways and/or felt there were better ways to spend the money than envisioned when the plan was originally drafted.

Legislative oversight and budgetary actions on that approved 2005 spending plan that budgeted those HAVA funds included restrictions on the use of the funds.
Finally, the U.S. Department of Justice gave direction to the Secretary of State and executed a subsequent Memorandum of Agreement that resulted in the creation of a so-called interim solution for a statewide voter registration database and required California to pursue a more expensive, long-term solution, the so-called "VoteCal Project."

Also, I want people to be aware that there's an additional restriction on the use of new funding in HAVA itself that says that any new voting equipment that's purchased with funds made available after January 1st of 2006, the $24.1 million California's entitled to receive, must -- if voting equipment is purchased with those funds, it must be fully accessible equipment.

---o0o---

CHAIRPERSON REYNOLDS: If you recall from the draft state plan update distributed to advisory committee members over the past year, California is meeting Title III requirements, because every county has deployed a HAVA-compliant voting system as we now understand what that term means. The EAC is reviewing for refinement its 2005 voluntary voting system guidelines. But as far as we're aware right now, our voting systems that the counties have deployed are compliant.
Every county is meeting the provisional voting requirements, which was a preexisting requirement in California, and each county has made a free access system available for provisional voters, so that a voter can determine whether her or his provisional ballot was counted and if not why not.

Every county is posting required information at the polling place; again, a preexisting requirement in California. Specifically, HAVA requires the posting of the sample ballot for the election, information on the date of the election, and the hours the polling place will be open, instructions on how to vote, instructions for first-time mail-in registrants, who may be required to show I.D., general information on voting rights, and general information on the prohibition on acts of fraud and misrepresentation.

Finally, California has an interim solution database that integrates and synchronizes the 58-county voter rolls with the statewide database -- the interim solution database, pursuant to that Memorandum of Agreement that I referred to.

The state is also conducting a competitive bidding process to develop and implement a statewide voter registration list or database that's fully compliant with Section 303.
CHAIRPERSON REYNOLDS: Now, I'd like to refer you to a folder that's been provided to you that contains some handouts on the right-hand side. The first one is entitled "State Plan 2004."

In viewing the previous state plan, it's apparent that some of the items in the initial 2004 State Plan and the State plan budget update submitted later in that same year were not explicitly Title III requirements. About 54 percent of the items in the -- or the funding devoted to items in the state plan budget are not directly or indirectly linked to Title III requirements.

So this handout illustrates, in a simplified fashion, the allocation of funding provided for in the previous state plan budget. It identifies those activities that were budgeted that are Title III requirements and those that are not Title III requirements.

CHAIRPERSON REYNOLDS: Again, the EAC has made it clear, through its advisory and guidance, that Title II funding, the funding we're talking about today and the funding that is provided following submission of publication of a state plan update, is for Title III purposes except in limited circumstances.
For instance, poll-worker training funding is allowed when a new voting system is deployed or when a county uses, what is called, a minimum requirements payment funding; again, about $11.6 million statewide.

I'd like to refer you to the next handout in your folder, which is titled, "U.S. Election Assistance Commission Funding Advisory Opinion, FAO-08-011" in your folder.

In brief, voter education is likewise limited when a county deploys a new voting system or when a county is using a paper-based centrally-tabulated voting system and needs to educate voters on consequences of over-voting and provide second-chance voting by correcting an error in a ballot because of over-voting. This can be accomplished, under these circumstances, under HAVA, by providing that voter with a replacement ballot.

So these opinions about poll-worker training and voter education are both included in this frequently -- I'm sorry, this funding advisory opinion.

There's also a funding advisory opinion that I've included, FAO-08-005, that's in your folder, that talks about the fact that the EAC does not believe that funding for voter registration drives and get-out-the-vote efforts are allowable.
CHAIRPERSON REYNOLDS: This brings us to one of major tasks at hand for California, which is aligning the state plan and the state plan budget with HAVA implementation. In this case, I'd like to refer you to the handout in your folder titled "Spending Plans 2005 through 2009."

As I mentioned, California has achieved at least interim compliance with Title III requirements because counties have deployed voting systems consistent with Title III requirements; provisional voting rights, including the free access system, are being provided; required voter information is being posted at the polling place; and a statewide voter registration list that complies with the Memorandum of Agreement executed with the U.S. Department of Justice is in place, and we are pursuing through the competitive bidding process the long-term project. However, there are differences between the original state plan and what California has actually done.

As previously described, California's initial state plan included funding for tasks not directly related to Title III. $70 million was earmarked for voter education efforts. However, because legislatively-approved spending plans do not include that funding, and because of EAC restrictions on the use of funds, only
about $8 million in Title II funding was spent on this.

About another $7.4 million was spent using Title I funds
for voter education.

As described earlier, EAC guidance on this issue
has restricted the use of Title II funding for this
purpose to circumstances more limited than was envisioned
in the original state plans.

The administrative functions of HAVA, some of
which were included as Title III expenditures in the
original state plans, such as managing the plan, budgeting
the fiscal oversight, are being paid for with Section 101
funds.

Finally, the other big difference between the
original state plan and actual implementation is the cost
of the statewide voter registration list or database. The
current cost estimate is about $66 million. The amount of
money set aside in the original plan was about $44
million. Therefore, one of the important steps to take is
to realign the state plan budget with actual
implementation of HAVA and then to look to the future for
allocation of the expected funding -- or I'm sorry -- for
funding of $3.7 million that hasn't been allocated from
the original allotment, $24 million in new funding, and
about $35 million in interest earned on HAVA funds, for
about a total of $63 million.
The allocation of future funding in the state plan update will need to focus on Title III requirements and take account of restrictions on the funding, including the fact that any spending of new HAVA funds on voting systems will need to be expended only for fully-accessible equipment, if that's a decision that gets made.

And I'd like to refer you to the final handout in your folder, which references the fact that any funding allocated after January 1st of 2006, if it's going to be spent on voting systems, must be spent on voting system equipment that is fully accessible.

Also, it should be noted that even before California's fiscal crisis, the Legislature and the Legislative Analyst's Office, the non-partisan budget advisor to the Legislature, was voicing a strong preference in using HAVA funding to operate the statewide voter registration list for as long as possible to avoid any state general fund cost for as long as possible, as the Secretary mentioned.

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CHAIRPERSON REYNOLDS: So with that, we have received extensive written comments from Disability Rights California, formerly Protection and Advocacy, Incorporated, from the California Foundation for Independent Living Centers, from the Asian Pacific
American Legal Center, California Common Cause, the League
of Women Voters of California, and the Disability Rights
Legal Center.

So I thought it might be helpful to go through
those comments item by item to discuss the implications of
including them in the state plan and see if there are any
additional comments, either representatives from those
groups or any other advisory committee members would like
to add at this point. I'll also try to clarify, if that's
necessary, the way I've characterized the comments,
because I have tried to provide them in an abbreviated
fashion.

But before we do that, I was thinking that if
anyone had any questions about anything that I've said so
far, I would like to entertain those questions now.

COMMITTEE MEMBER LEE: Chris, would it be
possible to get a breakdown of how the Title I funds have
been spent, specifically the Section 101 funds? So the
chart that you provided, the spending plans on Title III
requirements from 2005 to 2009, that's very helpful, but I
think it would also be helpful to get a similar breakdown
for the Title 101 funds -- I'm sorry, the Section 101
funds.

And I just wanted to clarify, did I hear you
correctly in that all of those funds have been expended?
CHAIRPERSON REYNOLDS: No. All the 102 funds have been expended.

COMMITTEE MEMBER LEE: Okay.

CHAIRPERSON REYNOLDS: We are using Title 101 funds to administer HAVA. Off the top of my head, there was an allocation of funding from the Kevin Shelley administration to the counties leading up to the November 2004 election for poll-worker training and voter education.

I believe that was about $6.6 million for that program.

MS. KAUFMAN: 6.7

CHAIRPERSON REYNOLDS: $6.7 million.

There was expenditure to 101 funds to comply with the interim solution, the Memorandum of Agreement, that was executed with the U.S. Department of Justice. I believe that was about $3.2 million.

MS. KAUFMAN: It's more than that with the smaller counties. It's a little over three and a half.

COMMITTEE MEMBER LEE: So that's for the database?

CHAIRPERSON REYNOLDS: The interim solution database that we have currently.

Then there's some administrative costs. There's creating the definition of a vote. There's --
MS. KAUFMAN: Supporting the evaluation of equipment, the open source.

CHAIRPERSON REYNOLDS: Right. There's the open source evalu -- I'm sorry, the code -- the source code evaluation that was done on the voting systems, through the top-to-bottom review, was an effort that was funded with Title 101, but there are some others that we'll get you some --

SECRETARY OF STATE BOWEN: Partially. A lot of the top-to-bottom review was funded by Title 101, but a big part of it was founded by the vendors.

CHAIRPERSON REYNOLDS: Right. That's true, absolutely. The bulk of the funding. In particular, the funding that came from 101 was devoted to the accessibility testing that was done as a top-to-bottom review.

COMMITTEE MEMBER LEE: And there's some other items, like the Voter Bill of Rights and the HAVA compliance manual. That's all with Section 101.

CHAIRPERSON REYNOLDS: Yeah. We could lump those -- I mean, generally speaking, lump those under the administration of HAVA. But we will try to provide you with as much of a breakdown as we can.

COMMITTEE MEMBER LEE: Sure. That would be very helpful. And also indicating how much is unallocated, if
there are any unallocated funds.

COMMITTEE MEMBER MacDONALD: Chris, I assume we'll get a copy of the PowerPoint.

CHAIRPERSON REYNOLDS: I can send that to you, sure.

COMMITTEE MEMBER MacDONALD: And somebody's taking notes that we'll get afterwards?

CHAIRPERSON REYNOLDS: We are taking minutes and we are transcribing the meeting.

COMMITTEE MEMBER MacDONALD: And another question on the Funding Advisory Opinion 08-011.

CHAIRPERSON REYNOLDS: Yes

COMMITTEE MEMBER MacDONALD: If the State - the discussion part, if the State has filed a certification under Section 2571(b)2, what's the certification?

CHAIRPERSON REYNOLDS: There's a -- when I refer to the minimum requirements payment program, and I guess bureaucracies talk in code sometimes. When they refer --

COMMITTEE MEMBER MacDONALD: Sometimes.

(Laughter.)

CHAIRPERSON REYNOLDS: When they refer --

SECRETARY OF STATE BOWEN: Sometimes they don't.

(Laughter.)

COMMITTEE MEMBER MacDONALD: Rarely.

CHAIRPERSON REYNOLDS: When there's a reference

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in this advisory to Section 251(b) -- I'm sorry, I'm looking at the wrong one -- to 251(b)2, they're referring to the minimum requirements payment program, which is found in Section 251 under subparagraph (b)2. What was required was that the State file a letter with the Election Assistance Commission stating that they were going to have or utilize this provision of HAVA. And that was done.

And the funding primarily -- initially was for purposes of helping counties cover some of the ancillary costs associated with HAVA, such as upgrades to warehouse solutions, storage facilities, to make sure that the equipment that they were purchasing, the investment in that equipment was protected.

It was also -- there was an interest in having cell phones, so that there could be immediate and direct contact between the polling place and election headquarters.

So those kinds of things were the kinds of things that were initially envisioned as apart of the minimum requirements payment program, but -- because, frankly, the Secretary of State's office thought that voter education and poll-worker training was such an integral part of, you know, making sure that HAVA was implemented and implemented fully and correctly, it didn't occur that
those kinds of costs would be limited to minimum
requirements payment allocation.

Be that as it may, the EAC, when it finds
something that it thinks is worthy, will, in most
cases -- well, in some cases, if they say it's not
directly linked to a Title III requirement, will say that
it's a minimum requirements payment. It's allowable as a
minimum requirements payment. And you'll often see them
refer to 251(b)2. That's the way they refer to it.

COMMITTEE MEMBER MacDONALD: And then in that
same section, it talks about training of election
officials, election volunteers, and poll workers. What's
the definition of election officials? Is this election
administrators or --

CHAIRPERSON REYNOLDS: You know, there's no
definition that I'm aware of in HAVA. There's reference
under Section 101 to -- they make a distinction between
elections officials and poll workers, but there's no
definition as far as I'm aware in HAVA that says this is
what an election official has been. There's no definition
of what a federal election is, for instance; although
there's reference to federal election there. The EAC has
come back and filled in some of the blanks thereby relying
on, for instance, the definition of the U.S. Department of
Justice for a federal election.
So things like that have been fleshed out, but I don't know that there's any distinction --

COMMITTEE MEMBER MacDONALD: Thank you.

CHAIRPERSON REYNOLDS: -- that I can elucidate.

COMMITTEE MEMBER FENG: Chris, you talked about the negotiations with the DOJ producing the implementation of an interim system that was more expensive than --

CHAIRPERSON REYNOLDS: No.

COMMITTEE MEMBER FENG: Help me understand what you were describing.

CHAIRPERSON REYNOLDS: What I was referring to was the fact that the long-term fully-compliant voter registration database, the cost estimate that we have for that system now, the best cost estimate we have, again, at this time, and we're still in the competitive bidding process, is $66 million. The original state plan, when you take the different elements that are associated with the statewide voter registration database, add up to $44.1 million. So it's a more expensive system by, I guess, a third, if you will.

COMMITTEE MEMBER FENG: And then there was another number that I was not catching, 63 million --

CHAIRPERSON REYNOLDS: Is the amount of funding -- under the spending plans, okay -- and, again, I'm trying to make a distinction here between the State
plan budget, which you would find under the State plan that was produced and was published, and the spending plans that actually give the Secretary of State the legal authority to spend the funding, which is done through the legislative budgetary process. Taking the $195 million in contracts that have been executed with the counties for voting system upgrades pursuant to that legislative authority in the spending plan, and the cost estimate of $65.6 million for the statewide voter registration database, again, our best cost estimate, at this time, leaves you a balance of roughly $63.2 million, which is comprised of $3.6 or $7 million in unallocated funding.

If you take the 195 and the 65.6, and you subtract it out of the original allocation of 264.2, you'll see that there's about $3.7 million, $3.6-7 million that hadn't been allocated.

Then there's the new allocation of new funding, $24.1 million, that will be received by the State of California. It's entitled to receive after submission of the state plan, after it's completed, after it's been published in the Federal Register, and after the certification has been submitted. And then finally, the interest that's been earned, about $35.4 million, if I'm not mistaken. It's in the handout. So that's what comprises, if you will, the $63 million.
COMMITTEE MEMBER JOHNSON: That can be spent how?

CHAIRPERSON REYNOLDS: Title III requirements.

COMMITTEE MEMBER HUFFMAN: Can you better explain to me the prohibition against the voter registration? I didn't quite understand that.

CHAIRPERSON REYNOLDS: All I can do is direct you to the EAC opinion -- which I seem to have put away now. Let me see if I can find that.

FAO-08-005. It simply says -- and we'll go to the -- it looks like this. I'm trying to find the operative phrase here.

COMMITTEE MEMBER HUFFMAN: It says, "In the opinion of the EAC..."

CHAIRPERSON REYNOLDS: Yeah. Voter registration activities do not qualify for funding under the umbrella of improvements to the administration of elections for federal office, because the activities do not directly contribute to the administration of a federal election.

That seems to be their reasoning, that these are activities that were preexisting in the states, and it doesn't contribute to the administration of the federal election.

Again, issues that you can take with this kind of an opinion are, in my view, that there are new requirements for registering voters now in California, or
And those include making sure that the person, if they're a first-time voter who's registering by mail, includes their driver's license number or their partial Social Security number, so that that can be verified. And that the form itself has to conform to some specific provisions in HAVA.

So trying to make sure that people understand the rules about how to register to vote, which is the threshold to voting, yet the EAC developed this opinion. Likewise, the issue of voter education and poll-worker training, when it's critical that poll workers be trained so that you can, you know, deliver the full benefits of HAVA, so that they understand the rules. So that they can properly administer that, you know, front line of democracy, if you will. It's critically important that that be done.

And in addition to that, voter education is critically important, because when a person arrives at the polling place, they should know or should have been given some access to information about what their rights are, how the process works, and what they're going to encounter, so that they can exercise those rights. And there's a provision within Title III, I believe it's Section 304, perhaps it's 305, that says that the Title III requirements are minimum requirements. So there
is an expectation that you would be able to go with respect to voter education, for instance, because the Title III requirement is that you post specific information at the polling place.

The expectation was that if it is, in fact, a minimum requirement that you post the information at the polling place, that you would be able to go beyond the polling place, if it's a minimum requirement, that you'd be able to reach out to the voters ahead of time, because it just facilitates the process. It's just important to the process. It's just the right thing to do.

Nonetheless, the EAC seems to rely heavily on the strict. And I've talked with the EAC, I went back and gave a presentation to them at a public hearing on March 20th of 2008, where I raised some issues about both poll-worker training and provided them with a number of articles, 15, 20, a few dozen, about the reference poll worker's training would have really helped in some of these situations, where there seem to be confusion at the polls around early primaries that were being conducted in 2008.

For instance, there was an actual reference, and I don't recall what state it was, that a poll worker was telling voters that it was okay that they couldn't see how they were marking their ballots because they were using
invisible ink.

And there was a polling inspector that backed up that -- and the person -- now, I mean, we're talking about the nation. You know, we're talking about one instance that a reporter had, and maybe they didn't get it right. I don't want to read too much into that, but it's just one of those quirky and, in some respects, egregious examples of a need for poll-worker training. And so --

COMMITTEE MEMBER MacDONALD: You should read a lot into that.

COMMITTEE MEMBER ACTON: Yeah, I mean, if we hear of one instance, there are usually more behind that.

COMMITTEE MEMBER MacDONALD: Yeah. I mean, we've been doing this for a long time, and we have a group that convenes after every election. These are all California people. And we talk about what we've all observed. You know, there's a lot out there. Not all of it is just horrible, but there's a whole lot of error. And of course there's going to be a lot of errors. Look at how much time we have to train all these people.

COMMITTEE MEMBER ALVAREZ: Yeah, I wanted to ask one question. It wasn't clear to me from the materials that you had sent along regarding -- or actually two questions, regarding the $35 million in interest.

CHAIRPERSON REYNOLDS: Yes.
COMMITTEE MEMBER ALVAREZ: The first question is maybe you can tell me who the investment advisor was who generated that.

(Laughter.)

COMMITTEE MEMBER ALVAREZ: That's a pretty remarkable number.

(Laughter.)

COMMITTEE MEMBER ALVAREZ: But seriously, is it fair game to me, is -- can that allocated for any purpose whatsoever, or does it --

CHAIRPERSON REYNOLDS: No. The interest -- HAVA says that the interest that you earn on the money that you get -- HAVA was -- as I understand it, this is the first federal program that I've ever been involved in administering, but as I understand it, it was an unusual program, because they provided the money up front if you will.

They said, this is your allocation, and provided that you do the state plan and submit the certification, here's your funding, which needed to be deposited in an election fund. And then the interest earned on that remains with the state and needs to be used for Title II -- I'm sorry, Title III requirements. It's Title II funding, under Section 251 for Title III requirements, which are a 301 voting systems, and so on.
and so forth.

And the interest would earn, simply based on the pooled money investment account rate. Like I say, it's an administrative detail that I can't explain to you fully. But I think, in part, it was based on the fact that, you know, California's allocation was pretty large and that the money wasn't expended immediately.

There were contracts that needed to be executed with counties, and then there were reimbursement processes that we needed to go through.

COMMITTEE MEMBER ALVAREZ: So that stays with the Title III pool.

CHAIRPERSON REYNOLDS: Yes. It needs to remain within their and needs to be used for Title III purposes.

COMMITTEE MEMBER LOGAN: Chris, a couple of questions.

For instance, we've been talking about the EAC advisory, and you and I talked about this at length. I'm just curious, is there any plan or intent or ongoing dialogue between the Secretary and the EAC for further clarification or reconsideration of this advisory?

Because as I read it, and granted I read it with a slant, but --

(Laughter.)

COMMITTEE MEMBER LOGAN: You know, I mean, when
it says that things are one-time training expenditures.

You know, I think you could argue that in implementing the voting system, you implement that and then -- that you learn that there's a new training technique that will work to do that. So at least the first time you implement that new training technique, I think you can argue is a one-time expense. It wasn't at the time you -- it may not have been at the election that the first implementation occurred, but it still could be a one-time expense.

Similar, I think you can make that argument with the voter education program; that when we implemented it in 2006, we did A, B, and C as voter education; and 2008, Presidential election cycle, based on our experience, we focused our education in a different direction. It was not a repeat of a previous program. It was a one-time -- arguably a one-time expense.

So that's my first question, whether any of those kind of dialogues are going on?

CHAIRPERSON REYNOLDS: Actually, you know, other than beyond asking the opinion, because of, again, my presentation to the EAC and the questions I raised there never really elicited a response. And because we are where we are and we're coming up on a state plan update and I wanted to be as fully informed as possible, that was the reason for these questions.
Again, based on that presentation and based on the way I asked the question, in as much detail as I could provide to them, I'm not sure what more could be done by the way of asking, but I guess it doesn't hurt. I think there is a question that has been asked by Sacramento County about the issue of, you know, voter education, and, you know, what's allowable there. So poll-worker training --

COMMITTEE MEMBER LOGAN: In terms of interpreting this, though, as you look at the funding requests or reimbursement requests from counties, and you base it on this, those don't go before the EAC for consideration, it's a decision made here, right?

CHAIRPERSON REYNOLDS: Um-hmm. Based on --

COMMITTEE MEMBER LOGAN: And subject to audit of course, but --

CHAIRPERSON REYNOLDS: Correct.

COMMITTEE MEMBER LOGAN: All right. Okay. So questions of interpretation could be directed to you or the Secretary.

CHAIRPERSON REYNOLDS: True. Again, I think that in some respects the reference to one-time when deploying a new voting system may be, in some respects, based on old thinking, even though this opinion precedes what I'm about to mention; in that, I think the expectation was somehow
that voting systems would be purchased and that would be
the end of it, if you will.

And so when you get that voting system, you're
going to invest heavily in changing your poll-worker
training, and then you're going to be done with it. But
the EAC on March 20th of 2008, again, before it issued
this opinion -- 2008 or 2007, they issued an opinion that
essentially said it's okay to purchase a new voting
system, even if you've already purchased a voting system
using HAVA funds.

Up to that point, they had said it's -- we have
to look at these questions under some OMB guidance, Office
of Management and Budget. Is it allocable, allowable, and
then one of them is reasonable.

What they said initially was, we don't consider
it reasonable for you to go out and buy a voting system
and then to use HAVA funds to buy another voting system
when you used HAVA funds to buy the first system.

But upon reflection, the EAC changed its mind and
said, no, that's okay. In fact, you know, if you find a
flaw in what you've got, it's a good idea to upgrade or to
buy a new system and so on and so forth.

But these opinions, and as a result I think, in
part, from that experience, where staff had issued the
first opinion about it's not reasonable, and then the EAC
itself came out with a new opinion, you're not asking the
staff for an opinion any longer, you're asking the EAC.
So I guess based on all the information that I
provided to them and the fact that the EAC itself is
looking at this question, that there's some confidence
that they said what they meant, or that there's no further
interpretation. But, you know, I'd be interested in
continuing the dialogue, because certainly we did
consider, and saw training efforts, extending across a
whole cycle. And we have responded accordingly in terms
of what was done for reimbursement purposes. And now
we're faced with this opinion.

COMMITTEE MEMBER LOGAN: I guess what I'm trying
just to determine, and then I'll move onto a broader
question, is from -- is what's the best course of action,
in terms of if the reimbursement decisions are being made
here at the state, based on this advisory, and there's
some question on interpretation of what this advisory
says, I would argue that -- I guess I would like the
opportunity for us to be able to try and see if we can
find room in the interpretation that would support the
original spending plans that the State approved and that
the counties approved.
I think that that's a better direction,
sometimes, than asking the EAC for further guidance,
because they're dealing with a national issue, where we're dealing with a state issue. So I'm just trying to figure out what are the best steps to go through that. And it sounds like, if I'm understanding you correctly, that would be the first step. And then if there was disagreement in that interpretation, then there could be a decision made to -- by either your office or the party making the inquiry to go do these things.

CHAIRPERSON REYNOLDS: Well, I think it's important, though, to -- the experience seems to indicate, because there are so many instances where there seems to be a slight difference of interpretation with respect to HAVA, there's a need to rely upon the EAC. But let's have the dialogue.

COMMITTEE MEMBER LOGAN: And I don't think I'm saying anything different from that. I'm saying -- I mean, I don't think that it's a question of interpreting HAVA, I think it's interpreting what they've said here in terms of, when they say implement a new voting system versus deploy a new voting system. And when they say one time, and there's no reference to what that one time applies to, I mean -- again, I don't want to spend too much time on this, but I don't think it's an unreasonable thought when you look at the construction of HAVA and the intent of HAVA, that after you've implemented a new voting
system in an election cycle on a very practical and operational level, that you then learn from very experience, just like the presentation you made to the EAC, that, wow, we ought to be using a different training method for this.

And so the initial investment in that new training method, even though it may be two years after the deployment of the new voting system, is still arguably a one-time expense. Now, it's not a one-time expense if you go back every year and ask to be reimbursed for it, but the initial investment in the new training tool or methodology, I would argue, is in fact a one-time expense. And I think that's an interpretation of this advisory. It's not an interpretation of HAVA.

My broader question is sort of in anticipation of going through the comments, which I know is coming up, and that's just to -- is for purposes of understanding the intent of the state plan. It sounds like from the presentation that the state -- that this is really a -- being narrowly defined as a spending plan, so the plan is specific to the money and the pots of money and where they're being allocated. And I want to be sure that I'm understanding that correctly versus that being one element of a state plan that may address broader issues.

CHAIRPERSON REYNOLDS: Well, there are actually
13 elements that a state plan needs to include. And I
brought, in case people wanted to consult with HAVA at
all, extra copies. There are binders over there in the
back.

But I'm going to let you know here -- the first
element talks about how the state will use requirements
payment to meet the requirements of Title III.

MS. KAUFMAN: Page 72.

CHAIRPERSON REYNOLDS: I'm sorry. Yes, it's page
72.

COMMITTEE MEMBER JOHNSON: Can I?

CHAIRPERSON REYNOLDS: Yes, please.

-- that how the State will use the requirements
payment to meet the requirements of Title III, and, if
applicable, carry out other activities to improve the
administration of an election. So that's the minimum
requirements payment program.

How the state will distribute and monitor
distribution of the requirements payment, again, this is a
kind of a managing-the-plan category. For instance, you
know, what's the criteria used to determine eligibility.

Counties were determined to be the eligible units of
government because they administer federal elections.

So I'm going to gloss over some of these more
managing the state plan administrative things, if you
Let's see. How the state will provide for programs of voter education, election official training and poll-worker training as I mentioned. Again, this is one of those things where, if you're supposed to put it in the state plan, why is the EAC being so restrictive in terms of their interpretation of the use of --

COMMITTEE MEMBER LOGAN: I guess that's where I'm trying to go with the question, is even if we can't get past that hurdle, is the Secretary's intent to use the state plan as a document to identify those things that, from a policy level, that the state maybe ought to be doing in terms of voter education and training, even if we can't use HAVA funds for it.

I'm just trying to figure out, for purposes of the discussion, as we start going through this, and I see a lot of things that are marked as not being Title III related. I'm just trying to determine if those are germane to the discussion of the state plan or if those just get set aside and should be part of a different document, maybe a strategic plan or something else.

CHAIRPERSON REYNOLDS: Well, I don't have any great answers for you, with respect to that question. There are some things that it's worth noting are not directly related to Title III requirements, and that is
supposed to be -- what the state plan, in essence, does, it describes how you're going to meet the Title III requirements. Because again, as they talk about the voter education and election official training, they talk about the requirements of Title III.

And I guess one of the reasons for the focus is because -- or that I'm bringing the focus to that, is because the budget, the funds that are being allocated and the funding that's provided because it's interest earned and an unallocated amount of money, those funds are for Title III requirements.

And so to answer your question, though, I'm hoping that there will be an open dialogue here, that I can bring good ideas to the Secretary, and we will have to have maybe additional discussions about, you know, how to include things that are not Title III related in some other venue, like you said. Is it another document, or is it to be included? Because most of the things that are raised as comments are related, in some fashion, to the Title III requirements.

COMMITTEE MEMBER LOGAN: Okay. Thank you.

CHAIRPERSON REYNOLDS: Yes.

COMMITTEE MEMBER LEE: Go ahead.

COMMITTEE MEMBER FENG: I have a lot.

COMMITTEE MEMBER LEE: Okay, so do I.
COMMITTEE MEMBER FENG: Okay. Well, why don't we go back and forth.

COMMITTEE MEMBER LEE: Sure.

COMMITTEE MEMBER FENG: I'll start with the simpler questions.

So Secretary Bowen mentioned that she was interested in going further and looking to see if there are patterns regarding the uncounted provisional ballots and why they're not counted, and if there are things that can be done policy-wise to address that.

Is it your sense that that is work that could be covered by Title III funds or is it something that she's just thinking about as a larger initiative from the Secretary of State's office or different?

CHAIRPERSON REYNOLDS: Again, I'm a little skittish about making predictions about what you can use Title II funding for, because the EAC seems to look at things more restricted. But provisional voting is certainly something that is required under Section 302. And then there's the performance measures that are to be a part of the state plan.

This, to me, and I know that -- I believe the joint letter that was written by Common Cause, Disability Rights California, I believe League of Women Voters, and -- I'm forgetting somebody, I'm sorry.
COMMITTEE MEMBER BAZYN: CCB.

CHAIRPERSON REYNOLDS: Yes, thank you. The California Counsel of the Blind -- mentioned that specifically. And I think that's an ideal kind performance measure.

COMMITTEE MEMBER FENG: And it hasn't been done yet. That you know of, there's nobody in the Secretary of State's office who is asking all the counties about their last round of voting, how many provisionals, how many weren't counted, why.

CHAIRPERSON REYNOLDS: My understanding is that someone is collecting data on the number.

COMMITTEE MEMBER FENG: In your office?

CHAIRPERSON REYNOLDS: Yes.

COMMITTEE MEMBER MacDONALD: No, I don't think so. I think somebody from the CACEO is going to do that. Because some counties are actually tracking those statistics.

CHAIRPERSON REYNOLDS: Yeah. No. I mean, yes. And I was going to ask the counties as well to chime in here. But from a statewide perspective, I don't know or I don't believe that we have a standardization on the terminology that you use. For instance, the EAC in its survey, its election-day survey, asked the question, "Are you rejecting a provisional ballot because the person is
not registered in the state?" And some counties said, well, we don't know whether someone is registered in the state or not. We just know they're not registered in our county.

So there's a standardization of terms, in some respects, that needs to be done so that everybody clearly understands what we're talking about. But that information is being collected. The free access system is being provided. Although I do understand that one county was manually looking when people contact their office, in some cases, for provisional ballot envelopes to, you know, verify whether it was counted. And if it wasn't, why it wasn't, and so on and so forth.

But standardization of terms and, you know, collecting the information and having a common place and a common way to collect that information, and then an analysis of the data. No, I don't believe that that's happening on a statewide basis.

And do you want to hear from the counties about what they might be --

COMMITTEE MEMBER FENG: I'd love to.

Is there anything -- is anybody doing it? Is CACEO doing it?

COMMITTEE MEMBER LOGAN: I think that there are many counties that are doing it on an individual basis,
and there may be somebody who is requesting that data from anybody who's collecting it. I don't know that I've seen a cumulative --

COMMITTEE MEMBER MacDONALD: I know Bonnie was talking to somebody who was trying to collect the data just a month ago, because wasn't she doing a project on that, so I can tell you --

COMMITTEE MEMBER FENG: On a provisional ballot?

COMMITTEE MEMBER MacDONALD: And on why, yeah.

COMMITTEE MEMBER LOGAN: I don't think -- even if it's there, I don't think it would be uniform or consistent just because so much of the coding of how you code those in a system is unique to your individual system. So, you know, what you call it, your menu of reasons for accepting or rejecting a ballot is probably not consistent from that.

COMMITTEE MEMBER MacDONALD: Also --

CHAIRPERSON REYNOLDS: That's why I was talking about standardization of terms. You want to make sure you're collecting the same data.

COMMITTEE MEMBER MacDONALD: But, Chris, I mean there's also a difference between, you know, collecting the data and then reporting back to the Board. That's a big difference.

CHAIRPERSON REYNOLDS: I'm sorry, collecting the
COMMITTEE MEMBER MacDONALD: When you said somebody's going back and manually and actually then telling the voter whether or not, you know -- or the reason for why a ballot was rejected. I mean, those are two different things. I mean, reporting back to the voter on that issue or just collecting the data for administrative purposes.

CHAIRPERSON REYNOLDS: Yeah. I mean, it's always -- you want to make sure that you have the standard stuff. And then you want to make sure that you're collecting the data. And then there's the analysis part of the data. And so as far as I know, that's not something.

COMMITTEE MEMBER FENG: Okay. But it's -- there's nothing, to your knowledge, that would limit this idea from being included in the upcoming plan.

CHAIRPERSON REYNOLDS: I don't think there's a limitation on putting it in as a performance measure, certainly, that it would be one of those things that you would probably include. I mean, it seems like it would be a good idea to -- I mean, the data is being collected. And I think the way it was described in the joint letter was find the commonality and then look at the root causes and see whether there can be programs to address it.
mean, that seems like a perfectly logical extension of
HAVA.

COMMITTEE MEMBER FENG: Okay.

CHAIRPERSON REYNOLDS: And there might be some
ways to work with some counties on a pilot basis as a way
to start it, so that you can work out those bugs. You
know, how do you standardize the terms, the data, how do
you collect the data and get everybody used to it, and
then you've also got some people who are used to it from a
county saying, hey, this can be done, and so on and so
forth. And I think some counties are doing it on their
own.

COMMITTEE MEMBER KELLEY: I was just going to say
in Orange County, we have the data that's collected and
it's easy to get. And we'd be happy to share it with you,
too.

COMMITTEE MEMBER FENG: Cool.

COMMITTEE MEMBER KELLEY: I was just going to add
too, I'm on a subcommittee for the EAC Board of Advisors,
and there is -- there are five states that are
participating in a program right now for an extension of
the election-day survey and drilling down to the precinct
level and provisional ballots. So you might also contact
the EAC. There's five states with that data right now,
that have that.
COMMITTEE MEMBER HUFFMAN: How difficult could --
I mean, how many reasons could a provisional ballot be rejected? How difficult is it to get 58 counties to agree on terminology?
CHAIRPERSON REYNOLDS: I'm not sure it would be difficult.
COMMITTEE MEMBER FENG: It seems like there's a handful of reasons.
COMMITTEE MEMBER KELLEY: Very small.
COMMITTEE MEMBER LOGAN: Actually, the menu of reasons is much higher in terms of reasons that they were counted and the reasons for why they had to vote provisionally and ultimately that that got counted.
COMMITTEE MEMBER MacDONALD: But it's also, to some extent, a vendor conversation, isn't it? Because the vendors really -- I mean, we don't have like that many vendors really. And, you know, I'm just always hoping that these vendors aren't charging every county individually for incorporating something like this. Maybe there's got to be a little conversation about this, that we all want to implement it, make it easier, because I think they're really playing games.
COMMITTEE MEMBER FENG: Okay.
CHAIRPERSON REYNOLDS: How hard would it be to get people to agree on the standardization of terms?
I'm just saying it's one step that needs to be taken. I think it has to do with -- I mean, if you don't throw in a question like they're registered in another state, because that's an easy one for a county to say, well, I don't know. They're just not registered in my county. But it was, in fact, a part of the EAC survey, and I don't know why it was in there. But, you know, the voter wasn't registered. They were in the wrong county.

COMMITTEE MEMBER FENG: Incomplete information.

CHAIRPERSON REYNOLDS: Right. They didn't sign the provisional ballot --

COMMITTEE MEMBER FENG: Or they registered too late.

CHAIRPERSON REYNOLDS: Right. And I think that would fall into the category -- see, there's -- where maybe you would say they're not registered, because you'd ask, well, how would I know if they were registered late? But, yeah, not registered at the time they cast their ballot or something like that. So you just have to work through it a little bit.

Anyway, but I think you're right, too, Karin, is it's -- there's also the element of working with the election management system vendors. You mentioned vendors, and I assumed that that's who you were talking about. And I think that these vendors are -- tell us, at

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least, that they have modules that are available for
people to capture this information.

But then there's -- they need some instruction on
how to extract the data in some cases from the election
management system. And then it's a question of whether
the counties are using the module that's available to
them. Do they even know it's available? Do they know how
to use it? Do they think it's important? And, in some
respects, it's an education process.

Counties, and I think states generally, told the
Election Assistance Commission about the election-day
survey, give us as much advanced warning as you can about
the data you want to collect, so we know what we're
supposed to be collecting. So, in some cases, I think
counties are doing what they think they can do, what they
need to do, in other words, what they can do with the
resources that they have. And they don't know that
someone's going to come and ask them about this or that
particular thing, and they -- so that's part of it, too.

COMMITTEE MEMBER LOGAN: I think that the general
information, as Neal indicated, is -- I'm assuming, that
is available from most counties. I think it just has
never been centrally reported. And I mean before going
down too far an elaborate road, it would be interesting
just to collect that which is already collected and look
I think you could probably discern from that the very information the Secretary was talking about, in terms of, you know, where are the hot points that we should be looking at.

COMMITTEE MEMBER MacDONALD: We're trying to do that right now, actually.

THE REPORTER: Can she speak up a little bit.

CHAIRPERSON REYNOLDS: Karin.

COMMITTEE MEMBER MacDONALD: We're working on that; give us data.

COMMITTEE MEMBER MARTINEZ: Well you know DFM is probably one of the largest election management system vendors, and they make changes regularly to their software, and they do not charge the counties. It's included in their monthly maintenance, if you will. So I'm sure it would be easy to get that or to be able to capture that from them.

COMMITTEE MEMBER LEE: Chris, can I ask you a question?

CHAIRPERSON REYNOLDS: Yes.

COMMITTEE MEMBER LEE: So I wanted to go back to your presentation about the spending plan for 2005 to 2009.

CHAIRPERSON REYNOLDS: Yes.
COMMITTEE MEMBER LEE: I think it would be helpful for me to know some information about the minimum requirements funding. So you mentioned 11.6 million of the original Title III allocation or the Section 251 allocation was for minimum payments. And it would be helpful to know how much of that is remaining.

And I think it also would be helpful to know for the remaining funding and the new funding that California is expecting, as well as the interest, what portion of that new funding will be allocated to minimum requirements, if that's what the Secretary wants to do, in fact?

And the reason I ask is I think that, that money, in my mind, is basically more flexible in its use. It can be used for non-Title III purposes, to improve the administration of federal elections. And I think to the extent that people want to look at specific issues with funding costs, it would be helpful to know that sort of information about the minimum requirements.

CHAIRPERSON REYNOLDS: Now, it will vary from county to county, because what was done was the $195 million contract, the cumulative total, was allocated based on the Proposition 41 funding.

The minimum requirements payment was a subset of that $195 million, and it was allocated based on that same
Prop 41 formula. So there are -- each county was assigned its proportionate share. And so the amount of minimum requirements payment funding remaining would be in individual county by county, and we'll try to get you that breakdown.

COMMITTEE MEMBER LEE: For the new funding --

CHAIRPERSON REYNOLDS: Yeah, I'll have to ask that question.

COMMITTEE MEMBER LEE: Okay. But in addition to knowing by the counties, it just would be helpful to know the total amount that you're expecting would be available for -- from that new funding.

CHAIRPERSON REYNOLDS: Well, let's see. Yeah. I mean, it's based upon the total amount of money that gets allocated; and I can't do that calculation off the top of my head. See, the EAC does the calculation. The reason they call it a minimum requirements payment is the money that's get allocated under Title II is the so-called requirements payment, because the Title II money is used for Title III requirements.

There was a formula or a provision put in HAVA that says that essentially no state is going to receive -- every state is going to receive at least this much money; and so that is the minimum requirements payment. So out of the new money that's been
appropriated, what is each state entitled to receive as a bear minimum, and that would be the figure. And I don't have that, but I can ask the EAC.

COMMITTEE MEMBER LEE: And does the interest also -- is that a pool of money from which minimum requirements can be taken?

CHAIRPERSON REYNOLDS: That's not my understanding, because it's tied to the money that gets allocated to the states. That's how they derive that formula.

COMMITTEE MEMBER LEE: So it's just the new funding, the 24 million?

CHAIRPERSON REYNOLDS: Correct.

MS. KAUFMAN: And the funny thing about is that all states have the exact same dollar figure, not percentage. The exact same total dollar figure. All of the states have 11.6 million available for minimum requirements use, but -- and so here California is with the largest allocation, and they've got the same as Rhode Island.

CHAIRPERSON REYNOLDS: Again, because it's based on what absolute minimum amount of money is every state entitled to. Because again -- they do this sometimes in state funding too, is if you do a per capita basis for your funding, then some counties will receive very little
money. And so what they say is, well, to run a proper
program, to do this thing that we want them to do, they're
going to need at least this much money. So whatever we
allocate, it's going to be at least this much money. They
did the same thing with HAVA.

COMMITTEE MEMBER JOHNSON: But, Chris, are we --
do we get an additional amount over the minimum based on a
per capita?

CHAIRPERSON REYNOLDS: No. Here, let me try it
this way.

The general allocation of funding for HAVA was on
a per capita basis. It was your voting age population
divided by the total voting age population for the
United States.

And I think, at least initially, it was about
11.6 percent of voting age population in the United States
lives in California. I don't know what the latest figures
are. Someone else around the table, who tracks this stuff
or smarter than I am, might know.

So we were allocated more money than any other
state, because we have the largest voting age population
in the United States.

However, again, what they said was, since you're
doing a per capita allocation of funding, a state like
Rhode Island or Delaware might get $50,000. That's not
enough for them to run a HAVA program. So we are going to make sure that they get at least this much money. And it's one half of one percent of something. It's in HAVA, and we could dig it out, and I'll show it to you on the break.

COMMITTEE MEMBER JOHNSON: No, I don't think you're understanding my question.

I mean, the way our program is funded is sort of similar. There's a minimum allotment that goes out to all the states. Once the minimum allotment has been sent out, then, depending on the size of your state, you may get additional monies on top of that.

So I guess my question related to the HAVA funding, is it a similar kind of calculation?

MS. KAUFMAN: Right, but not for minimum requirements. Because minimum requirements, as Chris says, is a subset. It's not additional dollars. It's simply defining the dollars you already received, this much of it can be used for that purpose.

COMMITTEE MEMBER JOHNSON: I see. So it's more related to purpose than funding.

MS. KAUFMAN: So it's not a bunch of money.

CHAIRPERSON REYNOLDS: That's correct. That's absolutely correct.

COMMITTEE MEMBER FENG: But if your subset falls
1 underneath -- if your State allocation is 11.6 percent and
2 it falls underneath whatever that minimum allocation is,
3 then they would at least give you the minimum allocation
4 is what you're saying, whatever that number was.
5            CHAIRPERSON REYNOLDS:  Well, it's -- I mentioned
6 11.6 percent of the state -- of the voting age population
7 in the United States. I think that was the figure, but it
8 just so happens that $11.6 million is also the amount of
9 the minimum requirements payment. So --
10            MS. KAUFMAN:  That's coincidence.
11            CHAIRPERSON REYNOLDS:  Yeah, coincidental.
12            MS. KAUFMAN:  Nothing to do with anything.
13            CHAIRPERSON REYNOLDS:  So I'm trying to
14 understand your question.
15            COMMITTEE MEMBER FENG:  No. No.
16            MS. KAUFMAN:  I guess what she's asking is did
17 Rhode Island get 11.6 million?
18            CHAIRPERSON REYNOLDS:  Yeah. That would have
19 been --
20            MS. KAUFMAN:  I think that's what you're saying.
21            COMMITTEE MEMBER HUFFMAN:  But they didn't get as
22 much overall money as California, based on per capita.
23            CHAIRPERSON REYNOLDS:  That's right. That was
24 their floor. And that's where they derived that number
25 from.
COMMITTEE MEMBER JOHNSON: But then you're saying that it's purpose driven also.

CHAIRPERSON REYNOLDS: Right. You're right. It's really purpose driven. It's this much of your money that you're getting, whatever that total amount of money is, this much of it, $11.6 million --

COMMITTEE MEMBER JOHNSON: Has to go to these things.

CHAIRPERSON REYNOLDS: No, it doesn't have to, but it can be.

MS. KAUFMAN: Can.

COMMITTEE MEMBER JOHNSON: Can be. I see, okay.

CHAIRPERSON REYNOLDS: We're giving you some more flexibility with a small amount of the money that you're going to receive. Well, small for California.

COMMITTEE MEMBER FENG: So I'm going to throw out a wild idea.

(Laughter.)

COMMITTEE MEMBER FENG: I'm prefacing it so that you are ready for the wild idea. Is there anything that you know of restricting Title III funding from being spent on State or county efforts to develop a voting system in-house that meets the HAVA, disability, language access, and other requirements?

CHAIRPERSON REYNOLDS: You mean could a county
Committee Member Feng: Could a county or consortium of counties or the county plus the SOS work together to develop a voting system using their know-how and their staff and maybe some outside consultants?

Chairperson Reynolds: I think the Secretary's referring to a Manhattan project for voting systems, right?

Under the existing mechanisms that we have with counties, we have reimbursement-based contracts. But I think you'd be talking about something that's different from that, outside of that.

Committee Member Feng: I think some model could be. The commission that's created to initiate -- what's it called -- stem cell research, not that we want it to be quite as controversial, but maybe voting systems are that controversial.

(Laughter.)

Committee Member Feng: But the idea being that California, number one, is a big state with significant internal resources, that if you got some of the best minds within the counties and the SOS together, we have the capacity to develop a system that would be responsive to the broadest span of special needs that any state would
have to face. Because we have, within California, the largest number of language requirements. We've got a lot of very active disability rights groups, and also a very active security -- voter integrity community. So if you put those different resources together, that California actually might be the perfect place to try to incubate a system that could meet the requirements of HAVA, but also the particular requirements that California brings to the table. It might turn around and be, as you say -- I don't know a Manhattan Project, but like the stem cell research where there are -- the dividends that get paid out are much larger than the initial investment.

CHAIRPERSON REYNOLDS: And I don't want to give a wild answer here.

(Laughter.)

COMMITTEE MEMBER FENG: Well, the first question was, is there anything in HAVA --

CHAIRPERSON REYNOLDS: That precludes it?

COMMITTEE MEMBER FENG: -- that precludes it?

That's the first question.

CHAIRPERSON REYNOLDS: I don't know that there is. I just -- I'm thinking about what very little I know about the voting system certification. Well, they don't call it certification anymore, at least in California. They call it testing and approval. The voting system
testing and approval process.

So you would need the capital, I suppose, to get it started. Then you would need the capital to go through the voting system testing and approval process at the federal level. It gets assigned to a voting system testing laboratory that's approved and certified by the EAC and run through its paces there. And then it comes to California.

And presumably you would reduce your costs there, because you're a part of a consortium on the front end, so you already know what you're talking about. So you don't have the cost there. So I guess you'd be primarily talking about the cost at the federal level, because vendors do talk about --

COMMITTEE MEMBER FENG: Right. And then the -- in theory anyways, if funds were going to be spent on a county or several counties purchasing new systems, you were going to allocate it to those counties to purchase new systems, that those funds might go towards the development of this joint project, whatever we're calling it.

CHAIRPERSON REYNOLDS: Yeah, but if a county was in a situation where they said, well, we have the system that we need right now and we still have some allocation of funding remaining under this, we would want to kick in...
some -- yeah, I don't know how to structure anything like that. I'd certainly, I guess, need to explore how it would work. And I'm not even sure who I should ask, other than maybe the EAC, at this point, about could you do this with HAVA funding? I mean, is there a reason why you can't?

Except that someone might say -- I'm just trying to think of all the possibilities, someone might say, no, you have to -- what that money is for is for purchasing a voting system that complies with HAVA 301, not for developing a system that complies with 301. You're putting money into something that hasn't actually met the standards yet, so it's inappropriate to -- so that's one possibility.

MS. KAUFMAN: Yeah. You run into federal funds competing with private enterprise, which is always a very sensitive issue in any federal grant.

CHAIRPERSON REYNOLDS: Well, but in this --

MS. KAUFMAN: Speaking generally.

COMMITTEE MEMBER FENG: Okay. And I don't know if this is considered to be private enterprise, if it's something that is generated and owned by -- like the proprietary ownership somehow resides. The same way, again, as somehow the stem cell research funds, the research that's generated is ultimately owned, I think, by
the State of California.

That if you had some type of partnership between the counties and the Secretary of State, and a product or a group of products was created that was responsive to California's needs. And I'll hypothetically say, for instance, in Los Angeles, if you were going to replace the system, that it could be as much as 150 million, is that right, to replace the whole voting system? And Los Angeles is fairly seriously considering replacing the entire InkaVote voting system.

So if you were going to do that, you're going to give that funding to a vendor anyways. And if it was the case that between the counties or some counties and the Secretary of State, there was a feeling that the current products that were available were not up to snuff.

CHAIRPERSON REYNOLDS: Yeah.

COMMITTEE MEMBER FENG: Then could a partnership be entered into to develop something, which could turn around, like the stem cell research, and then be licensed or marketed to other jurisdictions. So, you know, you could imagine that somewhere down the line that California could reap the benefits of that.

CHAIRPERSON REYNOLDS: Well, there's --

COMMITTEE MEMBER FENG: Besides having full ownership of software and hardware, so that you no longer
have to ask permission every time you want to make changes.

CHAIRPERSON REYNOLDS: Right. And this isn't on point with your question. But there are some things within HAVA that point to research and development to be done by the EAC itself. I don't know whether they have ever received any funding to do that kind of research, but there are provisions in HAVA. And I can try to dig out those provisions on the break and make sure that you have them when you come back. But that's one thing that suggests that, at the federal level, this wouldn't be unheard of.

How would the states partner with the EAC on such a venture? But within California, itself, I don't know. The only thing I can think of off the top of my head is this issue about spending federal funds on a speculative thing. That you're talking about developing a system. And until you have something to bring forward and we can show that it meets the Title III, then you can spend money.

COMMITTEE MEMBER FENG: Well, the irony is that purchase a new voting system is fairly speculative these days, because you don't know if it's going to be certified, you don't know if it's going to stay certified. And blah, blah, blah, blah. So I guess I just throw it
out there that -- I guess --

CHAIRPERSON REYNOLDS: People shouldn't be buying systems before they're certified, but -- I'm sorry -- tested and approved, but you're right, on the back end you find things sometimes and it's, you know --

COMMITTEE MEMBER FENG: And you have conditionally uncertified things and blah, blah, blah. And so I guess what I would just say is that we now have quite a few years of experience of going through the tug of war with vendors, and the EAC certification process, where some counties, like Los Angeles, have delayed purchasing a new voting system for over seven years now? Many years. And at the same time, there may be an accumulation of expertise and resources within counties and the State to be able to think about this as a viable option.

COMMITTEE MEMBER BAZYN: Part of the problem is that nowadays it's hard to get investors to go into a project hoping that they'll get money back from the State of California.

Right?

COMMITTEE MEMBER FENG: Yeah.

CHAIRPERSON REYNOLDS: If we had only known where this would all end.

But I don't know of anything that would suggest
that you absolutely couldn't do that, except for what I've
mentioned so far.

Anybody else got any ideas on this?

COMMITTEE MEMBER BAZYN: That's a good proposal.

MS. KAUFMAN: Where were you five years ago?

(Laughter.)

COMMITTEE MEMBER FENG: I've been suggesting this
from the very beginning. But I think, at the time five
years ago, we actually were somewhat hopeful that the
vendors would catch up and that the technology that they
were promising was going to be more functional than it's
turned out to be. I think in the -- and all along we knew
that many of our counties actually have the internal
expertise and had been developing hybridized systems
themselves.

So again, using Los Angeles as an example, there
are pieces of the voting system that come from different
vendors, but then there's also much that is developed
internally, like much of the software. And so it just
seems like, as we now are in, what feels like, seven years
of back and forth on the viability of voting systems, that
maybe we need to take that radical step. What seemed
radical before now seems maybe a little bit more plausible
as an option.

CHAIRPERSON REYNOLDS: Okay. I'll try to -- I'll
give you some information in the meantime, but I'll also
try to see what I can do to figure this out or ask the
appropriate people or -- I'm sorry.

COMMITTEE MEMBER MacDONALD: Is this -- are they
going to be public? I mean, are these comments going to
be made public?

MS. KAUFMAN: Yes.

COMMITTEE MEMBER MacDONALD: Then I'm not going
to say anything. But I think you'd want to check the
person you just talked to about this or whoever approached
you on this particular idea.

COMMITTEE MEMBER FENG: Nobody approached me.

I've been throwing it out in my own way.

COMMITTEE MEMBER MacDONALD: Because there is one
particular organization that has that idea in the State of
California. And I would say that all the other
organizations that happen to work in that particular field
and happen to have probably some of the world's leading
experts on technology and voting systems and whatnot.
They would probably say that some of these should be taken
with caution. I think there's a lot of promise with that
idea, every step of the way. And we can talk off the
record about that.

COMMITTEE MEMBER BAZYN: Well, the problem with
going the way we're going right now is a lot vendors don't
want to spend, you know, bunches and bunches of money making changes, if they're not sure if the state is going the purchase their products. And I think that's why they haven't made more extensive, you know, changes than what they have, because of that reason, don't you think?

COMMITTEE MEMBER FENG: Right. And there is just now -- it has become a chicken and egg situation where, as you say, there are some products out there. It's not perfect. There's back and forth about whether that product will be changed. It gets caught up in the testing system. It's not clear that -- anyways -- if it will be approved by various entities. And so by the time it's all said and done, the products that counties end up purchasing are not as responsive to their needs as what they'd hoped they would be.

And if a county or several counties had more control over the development of that product from beginning to end, then, I think, in California anyways, we would get ourselves out of this Catch 22 situation.

CHAIRPERSON REYNOLDS: Did you have --

COMMITTEE MEMBER LEE: I have a question on Section 251 funds for Title III purposes. So the first part of the question is, is the allocation as set forth in Section 6 of the draft state plan update set? And can we talk about that? So
specifically I would point to page 5, where it talks about no further Title III requirements payments funding will be used for voting information, the posting information at polling places.

And so I wanted to ask whether that's a decision that's been made final by the Secretary of State's office or is that still open?

CHAIRPERSON REYNOLDS: No, this is a draft, admittedly put together as a way to start discussions.
The description of what the Title II funding is intended for, the specific Title III requirements are posting information at the polling places. And so to the extent that, A, it's a preexisting requirement in California, and B, it's being met, and there were not HAVA dollars, other than allocation for Voting Rights Bill of Rights poster, adding all those things up, that was kind of just a general statement.

However, the group is interested in exploring, I know, there's been mention here made of providing for information at the polling place, that would be a Title III issue. And so the question would be what ideas do people have. And some of the comments that have been made, I guess I want to try to draw out, because at least the way I read them, I wasn't sure I understood what the proposal was.
COMMITTEE MEMBER LEE: And the second part of the question is I wanted to get a little bit more clarification on statements in Section 6 of the draft state plan as well as in the other materials provided. I think the -- tying 2004's funding plan to the current spending plan, the document you emailed earlier, and there's a statement about HAVA funds not being -- it's not a permissible use of HAVA funds to fund activities that are already being funded or were already required, prior to the enactment of HAVA under state law.

And so I think you're referring to that as the maintenance of effort provision; is that right?

CHAIRMAN REYNOLDS: Um-hmm.

COMMITTEE MEMBER LEE: So what is specifically the standard for that? I was unclear from reading the actual HAVA section that that imposed a prohibition on using funding to supplant activities already funded. I didn't get that from reading that, so I was wondering if that's coming from EAC guidance or is that --

CHAIRPERSON REYNOLDS: It's coming from the EAC.

It's coming from a general understanding of what "maintenance of effort" means. And, frankly, there's a lot of confusion at the federal level, and it's very frustrating for me, and I've been trying to get them to help us understand, and haven't gotten anywhere with it.
Frankly, when I talked about that meeting, the public
talking that I attended of the EAC, that was one of the
topics of discussion.
I talked a lot about voter education, poll-worker
training, but it was principally about maintenance of
effort. The EAC has a policy. They suspended part of the
policy. No one's sure what the policy is. It's a
difficult one, but the intent and the spirit of a
maintenance of effort is something everybody seems to
agree on, which is the intention of an MOE, as they call
it, is to make sure that when you get federal funding,
that you don't take that funding and spend it on an
activity that you're already doing. That would be
considered supplanting, and you should not do that, you
cannot do that. This is intended to expand the activities
that a state is conducting.
And I will see what I can dig up for you off of
the frequently asked questions that are on EAC website
about MOE.

COMMITTEE MEMBER LOGAN: Chris, does that apply
to the -- just as you said, that it made me wonder about
the push from the Legislature to use the remaining HAVA
funds to pay for ongoing maintenance and operations of the
new voter registration list.
I mean, is there an issue of fact -- I mean, the
State is currently paying for maintenance and operation for CALVOTER, right? I mean, that's a current expense.

CHAIRPERSON REYNOLDS: Right. Some of those -- yes, some of that is.

COMMITTEE MEMBER LOGAN: So is there a maintenance-of-effort issue?

CHAIRPERSON REYNOLDS: There is and there is not, because the EAC says specifically, on its frequently asked questions on its website, that you can use HAVA funds to do M&O, maintenance and operations, of your statewide voter registration database. But you do need to take into account that if you had a cost in your base year -- see, the way an MOE works --

COMMITTEE MEMBER LOGAN: Right.

CHAIRPERSON REYNOLDS: Okay, but for those who may not understand a maintenance of effort, the first thing you do is you create a base year. What level of expenditures do you have to maintain, okay? And in HAVA, it's the fiscal year preceding the November 2000 election; so 1999-2000 fiscal year for California, what were you spending on?

Now, the EAC -- and here's part of the confusion -- they say that these categories of HAVA, that your maintenance of effort applies to categories of activities, not specifically to what HAVA requires. So if
you did something in the past that related to voter registration, that's what they want to talk about, or at least that's what they have wanted to talk about.

So if a county has been maintaining voter rolls at the local level, then that kind of expenditure level, whether it shifts up to the State or it stays at the local level or it's some combination of the two, needs to be maintained.

But it does get difficult, because if you were able, for instance, to create some economy of scale and actually reduce the costs associated with voter registration, which generally speaking would seem to be a good thing, this maintenance of effort seems to imply no, keep spending money that you don't need to spend to keep doing the same stuff you don't need to do anymore because you need to maintain your level of effort.

Anyway, it's those kinds of --

COMMITTEE MEMBER LOGAN: And that's the debate that they're going through, right, is whether or not it's a broadly --

CHAIRPERSON REYNOLDS: Not really

COMMITTEE MEMBER LOGAN: -- this is how much money you spent for election's administration in that year versus categorizing it into those individual --

CHAIRPERSON REYNOLDS: That was one element or
one proposal, one form of a proposal that was introduced by one of the Commissioners. There are at least three different proposals that are out there.

Although, one was put forward by, then by vice chair, Caroline Hunter, who has been appointed to the FEC and moved on, and the other one was -- it was picked up, if you will, by Rosemary Rodriguez, who was then chair, who, yes, has since moved on. And so I don't know if that's an orphaned proposal, but there was one put forth by Gracia Hillman and then one put forth by Donetta Davidson, which is the one you're describing.

COMMITTEE MEMBER LOGAN: Right

CHAIRPERSON REYNOLDS: So, yeah, it's very difficult. But that is the genesis of the issue of supplanting. And again, I will try to find you something at the break.

COMMITTEE MEMBER LEE: Sure. Great. I think as part of that, I have a question in my mind is, to what extent does maintenance of effort prevent a state from using HAVA dollars to comply with the existing law, where it hasn't been doing a good job of doing so. So, for example, we're using HAVA dollars to help public assistance agencies comply with the NVRA or helping election officials comply with state language assistance obligations.
CHAIRPERSON REYNOLDS: Is it a Title III requirement?

NVRA is not.

COMMITTEE MEMBER LEE: Sure, that's not, but --

COMMITTEE MEMBER GOLD: But a voting system's accessibility to language is a Title III requirement.

COMMITTEE MEMBER LEE: Sure. Or Section 14201 of the Elections Code, posting of a sample ballot or of a facsimile ballot in different languages.

COMMITTEE MEMBER FENG: Yeah, but if you were doing it already?

CHAIRPERSON REYNOLDS: If there's a preexisting state law, then that would suggest that you could run into a supplanting issue, even if you are not doing it well, I'm not sure. I mean, if there's a state law that required it and you're not doing it well, I don't know. I know you did raise that in your comments.

COMMITTEE MEMBER GOLD: Perhaps, you know, we can talk about it more when we get into the whole concept of performance standards and auditing. But I think there's an opportunity to use the audit performance standard concept to take a look at how compliance is going on, with respect to certain aspects of the Title III requirements. And, you know, it's one thing I'd just like to bring up again when we talk about that.
CHAIRPERSON REYNOLDS:  Sure.

And as I mentioned with respect to the provisional balloting, I guess one of the things that I'd like to explore is, one, how much information we can talk about without getting too -- taking up the entire amount of time, because I'm sure it could, you know, the design of such a program. And then on top of that, whether it's possible to do something on a pilot basis that would show us how to do it right and then move forward from there.

I'm just -- you know --

COMMITTEE MEMBER ALVAREZ:  Can I make a quick suggestion on that?

CHAIRMAN REYNOLDS:  Yeah, sure.

COMMITTEE MEMBER ALVAREZ:  Because, actually this is starting to get into something that I really wanted for us to talk a little bit about. Because, unfortunately, I was at the table for the last HAVA state plan. And in that -- you know, in that plan, we set forward maybe 13 or 14 goals. And one of the things I thought was efficient of it in the draft materials that you sent around was the sort of reporting and trying to really assess how the former state plan met some of the goals that we had sort of laid out at that point in time, one of which was provisional balloting.

And so I thought that one of the things that,
just as a general idea, maybe not discussing the details here, but my general idea would be to literally go back to the former state plan, look at those goals, one of which was provisional balloting, and really set forward a series of performance measures that could really be, I think, very helpful for all of us in understanding what kind of progress we've made since 2003, but also what areas are really deficient and need really serious attention.

Because, again, as I went back and flipped through those goals, you know, to me it looked like about half of them are ones that really probably hadn't been seriously addressed.

I'd be more than happy to talk about details of the provisional ballot, but I would just sort of throw it into this general hopper of performance metrics.

CHAIRPERSON REYNOLDS: No, actually, if people wouldn't mind, I was thinking we would get to the comments earlier than this. But could we do this: Can we take a break now for lunch, do an hour, and come back, and could I turn it over to -- it's Dr. Alvarez, right?

COMMITTEE MEMBER ALVAREZ: Yeah. You can call me Mike.

CHAIRPERSON REYNOLDS: Michael. Turn it over to Mike to kind of start down that path, what you were talking about.
COMMITTEE MEMBER ALVAREZ: Sure.

CHAIRPERSON REYNOLDS: I think it would be very constructive.

COMMITTEE MEMBER ALVAREZ: That means I don't get to eat lunch. I have to sit here and actually think things through.

(Laughter.)

CHAIRPERSON REYNOLDS: We won't hold you to that. This is a free-flowing discussion, but I would --

COMMITTEE MEMBER ALVAREZ: I'll just take your comments and start from there.

CHAIRPERSON REYNOLDS: No, I think -- I mean, I think that's a very good way to get things started with respect to the comments, if people agree with that, I mean.

Okay. Thank you very much. We'll take -- get back here in an hour.

(Thereupon a lunch break was taken.)
AFTERNOON SESSION

CHAIRPERSON REYNOLDS: I think I'm going to take care of swearing in the members who were not able to be here at the top of the meeting.

All right. For those members who need to be sworn in, please raise your right hand if you'd like to and repeat after me.

For the Office of Help America Vote Act of 2002 State Plan Advisory Committee --

PROSPECTIVE COMMITTEE MEMBERS: For the Office of Help America Vote Act of 2002 State Plan Advisory Committee --

CHAIRPERSON REYNOLDS: -- I --

PROSPECTIVE COMMITTEE MEMBERS: -- I --

CHAIRPERSON REYNOLDS: -- state your name -- (Thereupon they stated their names)

CHAIRPERSON REYNOLDS: -- do solemnly swear --

PROSPECTIVE COMMITTEE MEMBERS: -- do solemnly swear --

Chairperson REYNOLDS: -- that I will support and defend --

PROSPECTIVE COMMITTEE MEMBERS: -- that I will support and defend --

CHAIRPERSON REYNOLDS: -- the Constitution of the United States --
PROSPECTIVE COMMITTEE MEMBERS: -- the Constitution of the United States --

CHAIRPERSON REYNOLDS: -- and the Constitution of the State of California --

PROSPECTIVE COMMITTEE MEMBERS: -- and the Constitution of State of California --

CHAIRPERSON REYNOLDS: -- against all enemies --

PROSPECTIVE COMMITTEE MEMBERS: -- against all enemies --

CHAIRPERSON REYNOLDS: -- foreign and domestic --

PROSPECTIVE COMMITTEE MEMBERS: -- foreign and domestic --

CHAIRPERSON REYNOLDS: -- that I will bear true faith and allegiance --

PROSPECTIVE COMMITTEE MEMBERS: -- that I will bear true faith and allegiance --

CHAIRPERSON REYNOLDS: -- to the Constitution of the United States --

PROSPECTIVE COMMITTEE MEMBERS: -- to the Constitution of the United States --

CHAIRPERSON REYNOLDS: -- and the Constitution of the State of California.

PROSPECTIVE COMMITTEE MEMBERS: -- and the Constitution of the State of California.

CHAIRPERSON REYNOLDS: -- that I take this
obligation freely -- 
PROSPECTIVE COMMITTEE MEMBERS: -- that I take this obligation freely -- 
CHAIRPERSON REYNOLDS: -- without any mental reservation or purpose of evasion -- 
PROSPECTIVE COMMITTEE MEMBERS: -- without any mental reservation or purpose of evasion -- 
CHAIRPERSON REYNOLDS: -- and that I will well and faithfully -- 
PROSPECTIVE COMMITTEE MEMBERS: -- and that I will well and faithfully -- 
CHAIRPERSON REYNOLDS: -- discharge the duties -- 
PROSPECTIVE COMMITTEE MEMBERS: -- discharge the duties -- 
CHAIRPERSON REYNOLDS: -- upon which I'm about to enter. 
PROSPECTIVE COMMITTEE MEMBERS: -- upon which I'm about to enter. 
CHAIRPERSON REYNOLDS: Thank you very much. 
And with that, if he's ready, I guess I'll call on Mike to talk with us about the issue that he raised just before we went to the lunch break. 
COMMITTEE MEMBER ALVAREZ: Yeah. I took the lunch opportunity to stroll around the Capitol and watch the anti-tax protest. So being a real political junkie,
that was the main thing I did. But as I walked, I thought about this a little bit, and then also I did actually do some homework. And let me just make a 35,000-foot pitch in the spirit of what Kathay was doing earlier this morning, just throwing sort of big ideas out.

If you happen to have grabbed a copy of -- I think Dean has got one right in front of him -- of the My Vote Counts, which they've got here, or if you look on page -- it's 9 and 10 of the draft document that I have that Chris sent around. In the original 2003 HAVA plan, page 5 of that booklet, there's 12 goals, of which Chris I think summarized almost all of them.

I'll stop until you have them.

MS. KAUFMAN: Anybody else need one?

COMMITTEE MEMBER ALVAREZ: It's page 5 of that booklet, or pages 9 and 10.

COMMITTEE MEMBER HUFFMAN: 9 and 10 of the draft?

COMMITTEE MEMBER ALVAREZ: Of the draft. At least the draft one that I have --

CHAIRPERSON REYNOLDS: Yes.

COMMITTEE MEMBER ALVAREZ: -- has page -- the way I printed it out.

And the sort of 35,000-foot proposal that I would throw on the table at this point, is that these goals --
most of them, perhaps not all of them, but some of them may not still be relevant. But certainly most of them could be used to frame the general set of performance metrics that I think we could pretty easily go back to either 2003 or prior to that, even 2000 in some cases, and try to quantify in a variety of ways -- and I'll talk about that in a second. And then we could, I think, do a pretty effective job of trying to understand how far we've come under the current -- under the things that have been done in California regarding HAVA, as well as continuing to assess progression as we move forward. And I think that would be a very, very productive thing to do.

Now, the proposal that I would pitch actually is that I have it on very good word, through a string of emails, probably about 15 -- those of you who know David Becker know that he likes to send email. Over the lunch hour I emailed this idea to David. And David actually thought this might be a very interesting idea as well; that if a group of folks from this room, including election officials and the academics, the stakeholders, and in particular the Secretary of State's office, were interested in putting together a proposal, they might be very interested in hearing about that. So this would be something that could be done without imposing on the HAVA budget itself.
COMMITTEE MEMBER FENG: David Becker from Pew Foundation.

COMMITTEE MEMBER ALVAREZ: The Pew Charitable Trusts, yes, for those of you who are not in the know of David Becker.

I happen to talk to David on like, you know, an hourly basis or something. But, anyway, he's very interested in this idea of developing a package of performance metrics at the state level. It fits very nicely with what they do at the Pew Charitable Trusts in the Make Voting Work Project, which is within the, I guess, their state policy sort of arm.

Anyway, so there's sort of an idea, there's the possibility that it could be funded. And then to flesh out how we might actually go about doing this, you know, I'd actually sort of turn it over to some of the folks who sent in comments, because I thought that some of the comments, in particular that Kathay's organization sent, had a number of very useful ideas for how you can quantify some of these different goals.

We had some conversation about that this morning regarding the provisional ballot, and I can certainly think of others. I know Karin's thought a lot about some of these as well and has already gathered some data on some of those.
But anyway, that's sort of the big picture that I would put forward, and I'd certainly be happy to help push this ball forward if there's interest.

COMMITTEE MEMBER MacDONALD: To piggyback onto that. We've had conversations with Pew about this too. And there's a general interest in the research community to actually come up with some performance measures and just outcomes. And Bonnie and I, we've been looking at poll-worker training work -- we're working on it now you know on -- because people want to use, for example, provisional ballots to assess whether or not poll-worker training is working. And that doesn't work.

I mean, yeah, sometimes somebody may get a provisional ballot because the poll worker didn't, you know, do something right, but often times it's just not the case.

So just to get our heads around whether poll-worker training is effective, really is effective. Also, you know, hear are all the problems, right? It depends on which audience you're training, you know, who are these people, how well are they doing, you know, how well they're educated, what languages do they speak, you know, how engaged are they? And, you know, sometimes there are all kinds of -- I mean, it's just like one of those moving targets. And we've been ripping our hair out
for quite some time actually.

As you guys know, we've been doing poll-worker training research for four years now, like really in-depth working with a lot of counties. And, you know, we've done surveys. And they were all really helpful. And we came up with a lot of suggestions, and they were implemented. And, you know, we now know that everybody loves Neal Kelley in Orange County. People are like, "Oh, we love Neal."

(Laughter.)

COMMITTEE MEMBER MacDONALD: Seriously, we had 27,000 responses to that, if you remember that. Debbie was actually involved in that survey too. We had a lot of responses. And I got stuck with coding Orange County. And like every second survey was like, "We are the best and Neal Kelley is just fabulous." It was incredible. I came in the office, I said, "Did anybody have like all of this like about their registrar and how they love their registrar?" And I don't know who it is, is it the League or it's somebody who --

(Laughter.)

COMMITTEE MEMBER KELLEY: I don't know her. No, I really don't.

(Laughter.)

COMMITTEE MEMBER MacDONALD: So anyway. He paid
me earlier to say that.

(Laughter.)

COMMITTEE MEMBER MacDONALD: Anyway.

But really what I'm just trying to say is, yeah, Pew and there's a lot of people involved in Pew. You have some really talented people. And everybody is trying to figure out how do we measure those outcomes. And, yeah, I bet, you know, David Becker would really go to bat for us and try to get money to develop some outcome measures.

But, you know, it's going to take a lot of money, and I'm not sure that -- I mean, I don't know, Mike, what your assessment is of that situation up at Pew, but they kind of got hit with the Madoff disaster, because Pew was partially funded by JEHT and JEHT went down because of Madoff. And so a lot of that money out of that foundation went down the tubes.

But I think to do some of this well it would really take a lot of money, a lot, because you need a lot of research. And a lot of it is going to be qualitative. And qualitative is really, really difficult and expensive to do, because essentially you have to have people right there really absorbing what's going on. It's travel and like, you know, it's not just data collection, not just give us a fly-over, provisional ballots. And it's talking to vendors, and analyzing it.
You know, a lot of it is -- I mean, I just think it's really a worthwhile project. I don't want to be pessimistic about it. I think we might be a little bit better off just maybe picking a few of these and then trying to develop some outcome measures or some performance measures and trying to implement those rather than all of them.

And on one of them, the overseas military voters, just to pick that one out. I feel like we've really just missed an opportunity in California when we redesigned the voter registration form, to actually even figure out who our overseas military voters are. I mean, you know, we say here that overseas military voters can vote conveniently and safely. We don't even know who they are, so how can we even assess whether they can vote conveniently and safely. We don't know who overseas military voters are. We do not know who our military voters are. There's very few people in the United States who actually know this.

We did a whole study on it. I think we just found one state that's actually implementing this properly so that they actually know who they are. And what they have is, on their registration form, they ask are you an overseas or military voter? And then on the return envelope, on the absentee envelope basically, they say,
are you still? They have to check that at the end. And
so the registrar is basically going to check that off.
Are you still an overseas or military voter? So that
helps registrars to keep their registration rolls up to
date.

But, you know, we just redesigned the form, there
was nothing on there about are you a HAVA voter. And I
suspect it's going to take a lawsuit someplace before that
actually gets implemented properly somewhere.

So now that I've rained on everybody's parade.

(Laughter.)

CHAIRPERSON REYNOLDS: Well, in some ways I'm
happy to hear what people are saying; and in other ways,
I'm back where I was, which was a little pessimistic about
it because. Likewise, I saw a real difficulty in
developing performance measures. I just wasn't sure where
this would go or could go and how much of it was
qualitative. And a lot of states have used, from what I
can tell from looking at performance measures there, have
tried to use quantitative information as much as they
could.

But when you have provisional voting, for
example, and you have the information that's supposed to
be provided to the voter about if the ballot was counted
and why not, I mean, you've got a qualitative kind of
information there that, you know, is being collected.

So there are some things that are being done in California by way of the one percent manual tally, the post-election manual tally and things like that that may be some kind of a measure for how well your voting systems are performing that could be included here as things we're going to do now.

But I guess I would ask the group's direction, guidance, preference in terms of how to write up something about here are the performance measures we have now, and for the future, we are going to be exploring opportunities to partner with -- I mean, is that the kind of thing that should be put in here, because it doesn't sound as though there's a real -- anyone has an idea about this is how I would design this, and this is what we would do, and this is how we would collect the data, and this is how it would be analyzed, and this is what the -- this is what outcome we're measuring.

So if I could talk further with people who are most involved with this about how that could be written up in the State plan and how far we could go before we know much more than we know right now.

Does that make sense?

COMMITTEE MEMBER FENG: Chris, how did the Secretary of State go about developing the top-to-bottom
review standards?

CHAIRPERSON REYNOLDS: You know, I'm not intimate -- I was not intimately involved in developing the criteria that they used for the top-to-bottom review. And to some extent, it's my impression, so take this for what it's worth, that some of this was really open-ended testing. It was bring in computer experts and let them take a stab at digging into a voting system and finding out where the vulnerabilities might lie.

So it was a methodology, perhaps, as much as a criteria; a set of criteria. But I'm pretty sure that when the first portion -- and, again, this is my impression of the way it happened -- the first portion where you do a review of the source code to look for those vulnerabilities before you dig into the source code to see what you can actually demonstrate might be there, there's a set of tools that get used to review the code, to look for certain things. One of the ones that someone mentioned to me was buffer overruns.

Is there a line of code with a space at the end that, for lack of -- you know, you have to bear with my technical ignorance -- is there a line of code that doesn't have some kind of a wall at the end of it that doesn't allow you to dump something else in there. Because if you have these buffer overruns, then you can
dump code into them and, either inadvertently or
purposefully, and it will do something that you didn't
intend for the code to do.

COMMITTEE MEMBER FENG: I guess I ask that,
because in some ways that is the kind of comprehensive
testing that we're talking about, where a team of experts
was assembled, some basic standards were laid out, your
scope was probably identified, but exactly what they were
looking for was somewhat left open and allowed to be
shaped through that audit process.

And while I don't think it should be a
free-for-all-we'll-know-it-when-we-see-it kind of
situation, I think that that may be the level of detail
that we would put into the state plan and then allow your
group of experts to flesh it out.

In the plan -- in the letter that we sent in, we
identified four areas of audit. And I'm not sure -- I
will not say that these are comprehensive, but these are
the ones that we thought of, and we did do what Michael
Alvarez suggested, which was to go through the plan as it
had been laid out under Shelley's administration and think
about how we could attach some measurables -- some
measurable way of examining whether we had achieved those
pieces.

So the four areas are audit the Secretary of
State's and counties' websites, materials, and voter assistance efforts to ensure usability for voters with disability and language needs. Some other members of this advisory panel have suggested that as part of that audit, we would also want to audit for larger usability issues than just concerns about voters with disabilities and language needs, much like TTBR included disability access, but was looking at a much broader set of issues.

Let me give you an example. So I think that Disability Rights pointed this out. When you go to the Secretary of State's website, it takes quite a bit of navigation to find the link that gets you to the information about how somebody who needs disability assistance could request it or could -- or could file a complaint, if there was a problem.

It takes quite a bit of digging to get to a button that allows you to click onto translated materials. So, for instance, if I was a monolingual Chinese speaker voter and I was looking for information, I'd have to navigate through a couple pages of English before I found the Chinese. And that almost renders it pointless, unless somebody's helping you.

I think that there are many counties that do a pretty good job. Some counties that probably don't do it at all. And having some systematic way of kind of looking...
for usability generally, usability on election day, which
is whole another thing, and then accessibility for people
who have disability needs or language needs are at least
some of the check-offs that we'd want to look for.

I'll give you an example of the website capacity
on election day. And I think Rosalind brought this up.
So for a lot of the counties what they do is, outside of
election week, they've got their website as it's
structured normally. And then as you get closer to
election day, they switch it so that the first thing that
pops up is the poll-site locator, because that's what 90
percent of people are logging onto. And rather than
making people jump through six different links and causing
the system to crash, they just put that right up front.

That's a great idea. And it's something that,
you know, our bigger counties have figured out. That may
become something that through the audit becomes a
recommended best practice for every county. So we can
think of a lot of things like that.

The second thing is an audit of the Secretary of
State's and counties' complaints process detailing the
number of complaints, the substance, the resolution, the
timeliness of reporting, and any changes in long-term
policy. And by the way, this is all in the letter so
don't break your hand trying to write it all down.
So that is -- as we understand it, the Secretary of State created a 1-800 number in compliance with HAVA to receive voter complaints. And since the creation of that hot line, despite multiple requests, both orally and in writing, no Secretary of State has ever issued a report saying how many calls were actually received and what the nature of those calls were and how concerns were resolved. So we don't know if it's five calls, or 5,000 phone calls or 50,000 phone calls. And because there's not an audit of the types of questions that the people are calling in with, there's also not a way of systematically then looking at longer-term solutions to help voters not have to make those phone calls in the future.

CHAIRPERSON REYNOLDS: So you're talking -- I'm sorry, just to clarify. So when you mentioned the audit of complaints, you weren't talking about HAVA complaints.

COMMITTEE MEMBER FENG: I think we were starting with the Secretary of State's HAVA hotline or the 1-800 hotline that was created, which receives a lot of other phone calls, but was created with HAVA funding.

CHAIRPERSON REYNOLDS: Right. So you're thinking about -- because HAVA complaints, according to the Act, need to be notarized and so on and so forth, and I know there's an issue with that.

COMMITTEE MEMBER FENG: There's a whole other
thing to that.

CHAIRPERSON REYNOLDS: But you were really talking about that -- because we get many more -- we get much more information, we get many more complaints, if you want to call them that, from the 1-800 calls than you would actually get in formal terms.

COMMITTEE MEMBER FENG: Yes, yeah. I remember thinking first and foremost with the hotline.

CHAIRPERSON REYNOLDS: Got it. Okay. Thank you.

COMMITTEE MEMBER FENG: And I think similarly, it would be very helpful to work with counties to do that similar type of analysis, because I think that if across the state we had a much better sense of the types of calls that come in, even the timing of those phone calls, you know, when is the largest crush, we probably could guess that, you know, the largest crush happens on election day. But that then would help us to shape policies that could be responsive.

If really the problem is about finding poll worker -- or poll-site addresses, then let's sit and think about what solutions there are to getting that information into people's hands in a way that's easier than whatever they're getting right now. So that's one piece of it.

The third thing is to create and monitor quality assurance standards for accessibility and language...
assistance. I think this is a fairly broad category. And let me try to give some detail to it. I think that probably what would fall under that is quality assurance standards for voting systems, for poll-site accessibility, for materials that are mailed or provided, for poll-worker training; maybe those are the big subcategories.

Am I missing any subcategories of things.

Poll worker training.

COMMITTEE MEMBER MacDONALD: In the subcategory of poll-worker training, whether the training is actually conducted, in what language the training is conducted and whether there's a reference guide provided with election terminology for the bilingual worker.

COMMITTEE MEMBER FENG: Right. One of the things that we talked about during, I don't know, Shelley, and maybe even McPherson's time was creating out of this some best practices. So, for instance, some counties have, from a very early day, created very good glossaries of common election terms and then their accepted translations for those terms.

And we talked about -- and I think Orange County was actually one of the first under Rosalind's term. And we talked about how if --

COMMITTEE MEMBER GOLD: You know EAC has a Spanish glossary.
COMMITTEE MEMBER FENG: Now, it does. But I'm saying like somewhere back in the late nineties Orange County did it. And I guess what we were thinking was that if there was a way to compare across counties or to work with the Secretary of State to develop those type of best practices, people don't have to keep reinventing the wheel.

If somebody's gone and done it, then another county doesn't need to. And so we should start figuring out what those standards might be. Then the fourth thing is analyze the reasons for provisional ballot rejection by category and commit to addressing any significant causal factors.

Let me add to that, I think we need to analyze the reasons that people use provisional ballots in the first place and try to figure out if there are large categories of people who are voting provisionally, who, with some type of systemic fix, could just vote with a regular ballot, whatever that systemic fix might be.

So those were the four main areas.

COMMITTEE MEMBER ALVAREZ: Can I actually just sort of respond now, since I threw this on the table.

I mean, I'm glad you provided that level of detail, because I think that's very helpful to flesh some of these areas out. And I will point out that there are
models for doing this.

In 2006, I was involved in a project that did this kind of comprehensive audit, Cuyahoga County, in the primary. Parts of it, I think, were successful, parts of it probably not.

And since 2006, we've been doing this kind of comprehensive evaluation in New Mexico at a state level. And New Mexico is a very different place than California, of course. It's a lot less complicated than California. California's got more languages, it's got more voters, it's got more voting systems. It's just a much more complicated place.

But that involves, I think, some of the things that Kathay sort of talked about. It involves qualitative kinds of analyses of poll-worker training programs; actually going and seeing how poll workers are being trained, evaluating the materials.

It involves poll-worker service, something that Karin's been working on and other people have been working on too. It involves voter satisfaction surveys.

Actually, you know, going out in a qualitative and quantitative way talking to voters about the problems that they face.

It involves qualitative analysis of poll sites and early-voting locations also. Literally, sending
people out in a comprehensive sort of scientifically-valid way to polling places. And at least in the New Mexico case, the four largest counties in the state. But you can certainly imagine how you do that in a variety of ways here in California.

It involves working with the election officials as they do their preelection voting system testing, the sort of logic and accuracy testing. And the kinds of -- other kinds of testing that can be done in California in the voting systems. It also involves looking at the post-election audit materials, because those are very, very useful for understanding the performance of the voting systems.

I mean, it really is a very -- I mean, I think there's a comprehensive set of measures and metrics that we could put together. And I agree with Karin; it's a big, daunting task, and so it may be picking and choosing what the right things are to focus on in the short-term is appropriate.

But I think, again, what would be really exciting about doing this is, if you can do it in California, you can do it anywhere in the country. And I think California could be seen as a model for how to do this kind of evaluation of the performance of its election system at a statewide level. And, yeah, I mean, certainly I'm more
than happy to sort of spearhead this effort if you want.

COMMITTEE MEMBER FENG: Some of the poll monitoring models, there are groups at this table who do regular poll monitoring who have surveys and are fairly standardized and have been tested in the field, so much of this does not have to be invented from scratch.

COMMITTEE MEMBER GOLD: I want to get a little bit of clarification. You know, I think this is a very, very powerful idea. One of the things I would like to get clarified is to what extent are you recommending that this be funded through HAVA monies for California as opposed to this idea of going to a private foundation for assistance, because there's a real tension there between --

COMMITTEE MEMBER ALVAREZ: I'd like to have it funded by somebody else. You know, and I think that's the first avenue to pursue. Certainly, in the short-term that's the avenue you'd pursue, would be sort of getting -- how do you get this thing up and running, right? And then from then on, you know, I think a different question is once something like this is established, how expensive is it to operate. And I guess we just simply don't know.

You know, a lot of this information is information that is routinely collected and just disappears.

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COMMITTEE MEMBER LOGAN: It is routinely collected and available. But I think one thing that has to be addressed in doing something on a comprehensive basis is that there are all sorts of groups out there doing this on a piecemeal basis. And so there has to be some recognition in the funding or the support of the program for assisting the counties in being able to get the kind of information that you need to actually do the analysis.

And I normally don’t beat this drum, but I think, you know, when you have elections every Tuesday between now and the end of time --

(Laughter.)

COMMITTEE MEMBER LOGAN: -- and you have, you know, six foundations and three oversight organizations coming around doing surveys all looking at the same data, but wanting it in a little different format and a little bit different spin, it becomes unmanageable.

So I just want to throw that out, so that that gets built into this, because we have -- just going on the four points that Kathay brought up, I mean, we just completed -- at least many counties just completed a State Auditor audit of poll-worker training, which I’m sure everybody around the table may have opinions about what the meaningful -- how meaningful that audit was, but it
did address a lot of these issues. And it was very time
consuming, especially since most of the people involved in
the audit had no idea what poll workers do.

(Laughter.)

COMMITTEE MEMBER LOGAN: But, you know, likewise,
we've -- we're doing the EAC studies. You know, there's
various pieces of this that are being done all over the
place, and there's not a lot of consistency to it. And
most counties -- I'm probably one of the few counties that
has some resources available on my staff, before the next
curtailment occurs, to try and assist in those. A lot of
counties, you know, if you're running elections or you're
doing your day-to-day activities, there's just no time for
this. I mean, I'm thinking the hotline report, we
finally -- I mean, L.A. County finally had the ability to
run a report on that, because we invested in a system that
collects that data as the calls are coming in.

We could not do that in the past. We had all the
information. There just was never any time or resources
to compile it, to be anything meaningful other than a box
full of paper of notes from phone calls. And now we've
finally gotten beyond that, but that's only very recently
that we've been able to do that.

So I just throw that out, because there's a cost
on the operational side too that has to be considered in
that, if you really want to get good data that's going to result in something meaningful.

COMMITTEE MEMBER MacDONALD: And I just have to ask this, just the cost of researcher too, that just assume -- we actually did observe, just because of so many trainings. I've been in more poll-worker trainings than anybody else in the world. I'm sure of it. I'm sure of it. I bet anybody, seriously. It's just -- seriously.

So anyway, I can recite some of them.

But it's interesting when you go to some counties, like, for example, you guys have a restructure -- L.A. has a restructure in process, right. So, of course, like all the trainers gets trained. Everybody gets trained the same way. And then you go to a training in one area of L.A., and you go to a training in another area of L.A., and you see two totally different trainings, you know. And then what do you do with that? And that's not just L.A., I mean, it's everywhere, because, you know, the trainers, the more they train --

COMMITTEE MEMBER FENG: Closes his eyes and cover his ears and doesn't want to hear it.

(Laughter.)

COMMITTEE MEMBER MacDONALD: You know, it's a normal process. The more these people are doing the same thing, the more they're making it their own training, and
the more things kind of just merge. You can script things to some extent. Some counties are very -- you know, very into like scripting, making sure that people really stay on message, but then everybody falls asleep. It's that kind of thing.

I mean, it's just really difficult to implement. It's difficult to design. It's difficult to research. It's difficult -- it's just difficult. You know, it's a difficult area.

I agree with Mike. I mean, you've got to start somewhere. This is great. But also let's keep in mind that when we come back with results, let's just say, okay, it rains Monday, it really does. We can really do a lot of these things. And then the counties get the reports back. Okay, here's the stuff that didn't work. Well, some counties have like no resources to implement any more than they just --

COMMITTEE MEMBER LOGAN: All counties have limited resources.

(Laughter.)

COMMITTEE MEMBER MacDONALD: But, you know, I mean, some counties are in a little better shape than other counties. I mean, there are some counties -- you know, are outside of California. I mean, I've been to election offices where they didn't have a computer hooked
up. I mean, this was not in California. You can take a
breath. But, you know, they just didn't have one, you
know.

So the resources are so different. And, you
know, the staffing is so different. And just the access
to knowledge personnel, and all of that is just -- it's
all over the place. You know, we've got to keep that in
mind as well. So that we don't have just some people not
doing it.

COMMITTEE MEMBER LEE: Chris, can I ask where the
funding source is for the performance measures and
objectives? Is that -- that's not Section 251, right? Is
that from Section 101?

CHAIRPERSON REYNOLDS: That is what would strike
me immediately, is that, again, the Title III requirements
are, as I described them before, and if I should go over
them again, I will, but --

COMMITTEE MEMBER LEE: But they don't include the
performance measures, right?

CHAIRPERSON REYNOLDS: No, they don't. And
developing performance measures are, again, from my
unstudied and ignorant perspective, very difficult, one,
to design, so you get some meaningful data back that you
can do something about. And then they're difficult to
operate, if you will, design them, operate them. And

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then, as people have pointed out, do something about it when you get the data back. But the first starting point does seem to be, well, let's try to gather the data.

COMMITTEE MEMBER LEE: Michael, do you have a cost estimate for the studies you've been involved with in Cuyahoga County and New Mexico?

COMMITTEE MEMBER ALVAREZ: I don't know about Cuyahoga. I mean, I can -- I don't have it off the top of my head on New Mexico.

COMMITTEE MEMBER LEE: Is it in the millions?

COMMITTEE MEMBER ALVAREZ: No, it's in the order -- no, a lot less than that. Drop at least one or two zeros.

COMMITTEE MEMBER LEE: So 100,000, 500,000?

COMMITTEE MEMBER ALVAREZ: Somewhere -- I don't know. I would say no more than 200,000.

COMMITTEE MEMBER LEE: Oh, okay.

COMMITTEE MEMBER ALVAREZ: But it's probably substantially less. And it's almost all -- it's either survey costs or personnel costs. You know, sending people out to 100-some polling places on election day is a costly logistic enterprise.

COMMITTEE MEMBER MacDONALD: Did you have them there all day?

COMMITTEE MEMBER ALVAREZ: Yes, all day. And
early voting too, all day.

COMMITTEE MEMBER MacDONALD: Because that's been the problem with the observers. We actually pooled observer reports from various sources for the last election, and the observations that we found are going on like by Election Protection and groups like that, which basically are groups that are made up of groups, is that they usually go out in the morning during opening and then maybe during closing and maybe once during the day.

But there's like a huge gap of data, which we -- so it's really kind of difficult to fill those gaps.

So if you're going to want to do that well, you're going to have to design that differently as well.

COMMITTEE MEMBER ALVAREZ: But, again, we can provide some cost estimates. And I think that the thing to do here is to just figure out what a variety of different, you know, sort of methods of sort of implementing the performance measures are. And to get a sense of what their costs might be in a state like California. And, again, California is very different from a place like New Mexico or Cuyahoga County. It's got a vast array of very complicated issues.

COMMITTEE MEMBER KELLEY: You know, Chris, I think it's also incumbent upon counties, and I'm sure my colleagues, if they could reach me from their end of the
committee member kelley: But that we all -- we're in a very good position to collect a lot of this data. And, you know, we're starting -- just as an example. We receive about 10,000 phone calls per day leading up to a major election in Orange County. I know L.A. County receives much more than that. But we're now going to survey all of those callers. And they will all have the option to take an electronic survey after the phone call is completed.

So we're in a position, at fairly low cost, to start collecting a lot of this data. Even at the poll site level, there's options for us to collect date on voters that are leaving the poll site. You know, there are satisfaction surveys. How was their experience at the poll site, as opposed to -- and I deal with Eugene a lot. I deal with many other groups in Orange County, and they work very hard to collect data, but we also need to do that to help assist. So we're going to start doing that in Orange County.

chairperson reynolds: Well, and there's -- I guess that brings up another question. To the extent that there are counties that are doing things now, that --

committee member feng: You should stop,
otherwise you can't get any money for it.

(Laughter.)

CHAIRPERSON REYNOLDS: No. No, I didn't mean to suggest that.

(Laughter.)

CHAIRPERSON REYNOLDS: I meant to suggest that there might be an opportunity to work with the county that's already doing some things, and to see how the data that is desirable to collect can somehow be shoe-horned or dovetailed with, you know, what people are interested in, information they're interested in collecting, and to see, you know, whether something can be piggybacked on it. And then once you've shown how something works, the possibility that it could be replicated elsewhere and how often and what would the cost be to replicate it elsewhere and so on and so forth.

So you may have just volunteered unknowingly.

COMMITTEE MEMBER KELLEY: That's okay. I mean, it would be good to partner with some groups to be able to do that.

CHAIRPERSON REYNOLDS: Right. So I guess this is still kind of an open-ended issue. I know that there's ideas about what, you know, information to be collecting and whether it would be okay, if you will, to put in the state plan and how to characterize it, that there will
be -- that there's an interest in, you know, conducting research into various components and trying to figure out where the money comes from, you know.

Is this an allowable use of Title II funding? Is there private funding available? Because it would seem like if you get the private funding on the front end, and if there's any 101 money that we haven't already, you know, budgeted for, and we get legislative approval for it, and all that that goes along with that, then there's the back end of the counties, how are they going to actually do it?

And if you've got a system where you've somehow managed to take your telephone system and link it up with, you know, go to this website and please take this electronic survey and then let's see what kind of responses you get on that, I'm just not sure who's got the wherewithal to have a system like that.

But I think most counties have websites. But I think some counties still rely upon the League of Women Voters lookup. Maybe it's because they've decided that they can't do it better and why reinvent the wheel. But I think there are some counties that are still relying upon that as the polling place lookup.

So it's an indication of one and the two; they don't have the resources to do it themselves. They don't
know how to do it themselves, or they can't figure out how
to do it better.

COMMITTEE MEMBER BAZYN: Chris --

COMMITTEE MEMBER GOLD: Excuse me. I just wanted
to take a little bit of a step back and take a second, if
folks will indulge me, in talking a little bit about what
we've learned from our own election hotline.

We have a hotline that's fully staffed with
bilingual staff. And most of our calls, I would say a
good 70 to 80 percent of the calls that we get into our
hotline in the couple of weeks before elections are for
absolutely basic information. Where is my polling place?
How do I determine if I'm registered to vote? How do I
confirm my registration status? What time are the polls
open?

And then the complaints that we get or the
concerns that we get raised on election day are basically
related to just, you know, two or three main areas. One
is, my name is not on the registration rolls; and two,
some kind of issue with respect to the provision of
language assistance, whether it was a poll worker who
wasn't aware of the requirement to provide language
assistance; whether it was, you know, unhelpful treatment
in terms of voter I.D. requirements; or lack of offering
people provisional ballots.
So with that as the context for our perspectives on this whole issue of performance standards, you know, we would really want to highly prioritize things that are already required by Title III, checking to see what kind of compliance there is with Title III. And, you know, for our community, issues relating to how well poll workers are trained, and implementing HAVA requirements -- fairly implementing HAVA requirements, and the accessibility, the language accessibility of voting systems.

And I realize that technically, if you look at the definition of a voting system, that the provision of basic information and some of the ways we’re talking about it doesn’t necessarily fall into it. So, for example, your ability to call up a county and find out over the telephone whether or not you’re registered to vote or not, I kind of really tried to work that into the definition of a voting system, and it was a little difficult. But we certainly feel, in terms of looking at overall the spirit of HAVA, the idea that your overall elections will be accessible to voters with language needs, that something like this would certainly fall into something you’d want to check through compliance.

I also strongly feel -- we strongly feel that there is a very unique connection between that and the Secretary of State being more proactive in terms of best
practices. You know, when I went to the Secretary of
State’s website, you know, basically what's up there for
best practices for election officials is just, you know, a
couple of little links to some really neat stuff that you
folks are doing on the county level. But it's arguable
that the Secretary of State could be much more proactive
in articulating the criteria for best practices.

You know, again, using an example of something
the Election Assistance Commission did with respect to
telephone hotlines, they came up with here's some of the
things that a good telephone hotline system should have.
You know, it should -- you should be able to get answers
to a broad range of issues. It should have really great
language assistance -- language accessibility and
accessibility to persons with disabilities. It should
have a computerized system for, you know, compiling
information about what the calls are about. It should
have well-trained, well-staffed staffers on the other end
of the phone lines.

So, you know, what we would like to see ideally
is some connection -- well, first of all, like I said, I
think we could probably together come up with maybe some
of the top priorities in terms of these performance
objectives and in terms of ones that are the most closely
related to Title III requirements. I know it's not
quite -- it's a little bit more of constrained vision than I think some of us would like to see. But at least it would get us a little closer and more narrowly defined to something that would be more workable and feasible.

And then, like I said, you know, from our perspective, we'd really like to see a bit more proactivity in not only -- taking this information and disseminating it to the counties and officials and allowing them to share information about the really neat stuff that they're doing, and what are some of the criteria for doing that.

And some of that, sure, you'd have to have a pretty intense research component on some of this, but some of this is not -- ain't so hard to do, you know. I mean, certainly just going to every single county website and getting a sense of what its accessibility is is not as data intense and as labor intense as some of the other ideas that folks have been talking about.

So, you know, I would hope that that's something maybe we can work towards, is keeping that bigger vision in mind, but also prioritizing and taking a look at feasibility of some things that could be really done that would be very helpful and useful in terms of leading into best practices.

COMMITTEE MEMBER MacDonald: For piggybacking on
what you just said, would there then be money for those
counties that are found to not have accessible voting
sites, I mean, on their -- like online websites?

CHAIRPERSON REYNOLDS: Oh. Well, that gets into
a question of whether it's a Title III requirement or not.
And the distinction that the EAC has drawn thus far is
that we're talking about 302 requirements. And 302
requirements are for voting materials at the polling
place. It requires that this information be posted at the
polling place.

So there is a question as to whether, to the
extent as a performance measure or as a function of just
doing elections right, you go out and check county
websites and say these are the things you should do to
improve, and here are the counties that don't have the
websites that are accessible, there might be an issue,
yeah.

COMMITTEE MEMBER JOHNSON: This is Margaret.
This is really shifting the conversation, I
guess. But I'm really interested in disability access
issues in the state plan. I mean, I think that that's
clearly something that Title III is related to is
accessibility of voting systems and materials that go out
for voters. When I reviewed the draft state plan, I
didn't really see as much attention paid to disability
access as I would have liked to. It seemed like there were pages and pages of information on the security issues that the Secretary of State was dealing with, not that those aren't important, but, you know, I really wanted to see more about disability access.

And when she did her top to bottom, she did do a review of voting systems in terms of disability access, but I didn't feel like there was enough in the state plan about what had come out of that. I mean, actually what came of out that was a bunch of things were conditionally approved for use, so that counties could use one only. And to me that's not really meeting the standards of HAVA -- the requirements in HAVA, if you're conditionally approving things.

I mean, I would really like to see this state plan focusing on let's get voting systems, you know, approved and in place that don't have to be conditionally approved.

And then just in line with things that are being accessible. I mean, even if you're not looking at websites, if you're looking at material that's available at the poll site, whether that's accessible or not. And I know that Title III doesn't really deal with polling place access, but that's clearly a large issue for people with disabilities. And if we're going to be doing surveys or
looking at, you know, access issues through these kind of accountability measures, that certainly is something that I think the disability community would want to see.

And I turn to my other colleagues around the table who deal with disability stuff, I'm sure you guys have things to add to this, but I feel, in some way, we're like getting, you know, down a road that isn't really, you know, focusing in on some of the access things that I would like to see the state plan deal with.

COMMITTEE MEMBER BAZYN: Yeah, that's actually what I was going to speak on earlier, was the fact that when we come to performance measures, that I would think would fit into Title III and the reasons that Margaret just mentioned, the fact that if you had some disability aspects in there about how -- or we're getting to Title III in relation to disability, add that onto this survey or whatever, I would think we'd have enough things on a survey, especially if we outlined in the way that we want to use these surveys or use this research in order to come up with best practices, that I would think that that would be under HAVA funding, under Title III. I don't know, maybe that's just my --

CHAIRPERSON REYNOLDS: Well, certainly I would agree that, you know, particularly when it comes to voter education, poll-worker training, and just improvement of
elections in meeting the spirit of HAVA, I would like the
flexibility -- all the flexibility in the world. But
again, it does seem as though the interpretations that
have come out of the EAC, and I would like people to look
at the EAC website, look under Election Official Center,
look under HAVA funds management, and look at their
advisories that they put out, where there are some
questions that are kind of broad in this respect. And
they have taken a narrow view of, you know, the Title III
requirements related to voter information at the polling
places, what we're talking about. We're talking about
educating voters under Title III. Provisional voting
rights and free access systems is what we're talking
about. Voting systems are what we're talking about and
the statewide voters registration database. Those are the
Title III requirements as they see them.

So, but, you know, it's not to say that it's not
worth going out and asking more questions or different
questions about what's allowable and what's not allowable.
In particular, could research be done or could funding be
provided to follow up, to address deficiencies or issues
that are discovered through research.

We just don't know, at this point, what those
deficiencies might be. But as they relate to things like
provisional voting, as they relate to things like voting
materials; those, I agree, they seem to fall under
Title III, but that's not the opinions that the EAC has
put out.

With respect to the conditional approval of
voting systems, every voting system has use procedures
that go with it. So every voting system is always
conditionally approved, because you can't use a voting
system contrary to the use procedures, because if you do,
then you're not following the conditions that are placed
on the voting system, and it's being inappropriately used.
And so that's -- I did want to clarify. That's the way I
understand it.

And I understand the comments about paying more
attention to the fact that HAVA talks to accessibility for
voting equipment and accessibility generally. And on
polling place accessibility, I do agree that there may be
some things that can be done around there. For instance,
as you know, we've asked for an update of the guidelines.
We're working with the Department of Rehabilitation's
Disability Access Section. We're trying to update those
guidelines right now. We want to provide an updated
checklist based on those accessibility guidelines. We
want to provide some training to the counties. This is
built into the contract with the Department of
Rehabilitation. And we have done contracts in the past
with the counties to improve -- you know, mitigate, educate, all those things that are allowable under the Section 261 Grant Program.

And in addition to that, we did the Grant Program recently to try to see if there was a way to have certain counties do things in a much more comprehensive way that could be replicated elsewhere. I mean, that was thinking behind the Title Grant Program.

So we've done those kinds of things to try to help with the accessibility -- polling place accessibility issue.

COMMITTEE MEMBER HUFFMAN: Let me ask a question on accessibility at a broader level.

Is there anything in HAVA that would speak to having polling places accessible to neighborhoods in areas in this state where maybe it's difficult, people, either low-income or what have you, without transportation to get to the polling places?

CHAIRPERSON REYNOLDS: No. HAVA doesn't speak to that issue as far as I'm aware. If anybody knows anything different, please speak up. But no, there's nothing in HAVA that I'm aware of about that.

We're talking about the polling place accessibility under HAVA, there's a section for a grant program through the Department of Health and Human
1 Services, federal department, where they provide grant
2 funding to states to improve polling place accessibility
3 for voters with disabilities.
4 COMMITTEE MEMBER LOGAN: Is there a report on
5 that funding? Is there a report on what's been -- what's
6 been spent and allocated from that funding source?
7 CHAIRPERSON REYNOLDS: We could provide, yes,
8 information to people about, you know -- part of the issue
9 with, you know, how it's been used, we have categories
10 that we've created, but we try to aggregate that
11 information to report back to the EAC for the annual
12 report. But we would have to dig through invoices and go
13 line item by line item to get down to some of the level of
14 detail. It would be very labor intensive for us to do so.
15 COMMITTEE MEMBER LOGAN: Even categorically, I
16 think it would be helpful to provide perspective, because
17 I think that the point is well taken that I don't -- I
18 don't think that we're telling the story about the focus
19 on accessibility to the degree that we're telling the
20 story about the focus on voting systems. And I think
21 there was a greater balance of that in the original policy
22 of HAVA.
23 COMMITTEE MEMBER JOHNSON: And the original state
24 plan, those of us that were involved in that originally
25 was a number of us in this room, really tried to insert
language into disability access, wherever we could, which is kind of why you've got things in the original state plan that seems now don't really fit. But I think when we talked this morning, I thought I heard that there might be a way to pull some of those kind of best practices, larger, you know, kind of state policy, bigger picture issues into a strategic plan, or maybe something that could be lumped into this, but not part of the funding. I don't know if there's a way to still capture some of that. What I thought was really good thinking, and I think in our comments we mentioned numbers of those where we wanted to know what happened. And, of course, in conversations we had with you separately kind of explained why those things didn't happen. But even though they didn't happen, doesn't mean that they aren't things that we might not want to still aspire to.

COMMITTEE MEMBER GOLD: Chris, I want to -- and my apologies, if it seems like we're backtracking and revisiting questions, but I just do need clarification on 2 issues.

The first issue -- I just backtrack again -- if there is a requirement under Title III that a voting system be accessible in a particular way, and the State is trying to determine whether that accessibility is actually occurring in real life. The ability to articulate
standards and to investigate whether that is occurring, you're saying those cannot be funded with HAVA money? In other words, to assess whether that accessibility is actually occurring with respect to a voting system, if there's a requirement under Title III that that accessibility exists.

CHAIRPERSON REYNOLDS: Well, I guess the assumption that I'm making is that the testing and approval process has looked for that accessibility functionality. And from what I'm told, the testing and approval process does include language accessibility and access for voters with disabilities. They're looking for that in the testing and approval process.

If there's someone who's going to the polling place. And that functionality is required and it's not provided, that shouldn't be happening. But I'm not saying it doesn't, I'm just saying --

COMMITTEE MEMBER GOLD: Right. But can HAVA money be used to do any kind of assessment of that?

COMMITTEE MEMBER LEE: I think that should be part of the performance metrics objectives. So I think the question is what source from HAVA -- what particular pool of HAVA money can be used to fund performance measure, development, and implementation.

COMMITTEE MEMBER GOLD: So we have not definitely
ruled out that we can't use HAVA money to determine it.

Secondly, I would like to just sort of raise the question -- and I'm sorry, my computer just decided to be a brat on me -- but under the definition of what constitutes a voting system, the first part of the definition is a voting system is a total combination of mechanical, electro-mechanical, or electronic equipment, essentially technology, which is used -- and it lists a bunch of things it's used for, but one of the things is technology that is used to make available any materials to the voter, such as notices, instructions, forms, or paper ballots. Notices, instructions, forms, or paper ballots.

I would just be interested in having explored whether that is wide enough to say that a website is a, you know, technology that makes available materials to the voter. And, therefore, that website has to be compliant with the accessibility requirements.

CHAIRPERSON REYNOLDS: Well, I was interested in pointing out that the poll worker is the one who provides that information and the paper ballot to someone, for instance, at the polling place. And, I mean -- it seems a little bit of a stretch to say that they're apart of the voting system. But, in fact, they are the ones that are delivering, like I said, on the promise of HAVA and, you know, on the front lines of democracy.
And so leaving them out of, you know, the definition, it seemed as though that was intentionally put in there as a very broad way to say, listen, we have to provide the benefits of HAVA, and it includes all these things. But it hasn't gotten --

COMMITTEE MEMBER GOLD: But, I mean, do you know, has there been any EAC ruling that has specifically said a website is not part of a voting system?

CHAIRPERSON REYNOLDS: Not to my knowledge.

COMMITTEE MEMBER GOLD: Okay.

CHAIRPERSON REYNOLDS: And again, I guess the -- it's -- the other thing I think is worth mentioning here is that to the extent that they talk about voting information, which you would find on the website, they say that the voting information requirement under HAVA, under Title III, Section -- it's in Section 302, and they talk about specific information that needs to be posted at the polling place.

COMMITTEE MEMBER GOLD: Right. But this is a different requirement. This is the accessibility. The voting system -- go to the definition of the voting system. This says a voting -- and, again, maybe I need to be more educated about what the EAC has defined or other interpretations. But this basically says, you know, one of the things a voting system is, is any combination of
technology that makes available materials to the voters, such as notices and instructions.

And, I mean, I think I would just -- you know, I don't know if there's somebody in your office who could just take a few minutes to take a look at that issue.

COMMITTEE MEMBER LEE: The statutory language is the practices used to make available any materials to the voter. And there's an argument, I think, that includes a website, that's a practice used to make available material to voters.

CHAIRPERSON REYNOLDS: As is the practice of having a poll worker provide this information at the polling place. And --

COMMITTEE MEMBER MacDONALD: Or provide assistance.

CHAIRPERSON REYNOLDS: Right. And so that's -- again, I tried to go in that direction.

COMMITTEE MEMBER GOLD: It's just interesting to me that a system, when the first initial definition of a system seems to be technology oriented. So there might be a -- might be, arguably, an easier argument to make when you're talking about the provision of information through that. Just, like I said, just wanted to throw it out there.

COMMITTEE MEMBER ACTON: Especially, when you're
talking about accessibility, language, people with
disabilities. This is a means of providing voter
education materials in accessible formats.

COMMITTEE MEMBER BAZYN: That's right, because at
the polling place there is nothing accessible as far as
polling materials, except the poll worker.

COMMITTEE MEMBER BAZYN: Yeah, but they don't
want to take the time to tell you anything though.

COMMITTEE MEMBER GOLD: By asking these
questions, I'm not at all in any way meaning to diminish
the importance of, you know, the poll workers as
front-line people. But to the extent that you're telling
us that the EAC has already sort of short-circuited the
ability to use HAVA funding to do as much as we'd like to
with respect to ongoing poll-worker training or
enhancements of poll-worker training, you know, I just
think this would be good to take a second look at this
other avenue, because, you know, there are a lot of folks
who are -- again, there's -- not everybody in the world
can get to the web, but a lot more people are.

CHAIRPERSON REYNOLDS: And the intent here --
just to make sure that I'm clear, the intent here would
be, all right, if this falls under the definition of a
voting system, then making the website accessible would be
allowable under Title III and would then be allowable
under your voting system contract that you have with the State or some other means.

COMMITTEE MEMBER GOLD: As well as allowable in terms of then also looking at performance. It would be easier to make the argument, and we can also look at an audit and take a look at what's happening.

COMMITTEE MEMBER KELLEY: This is a selfish statement, but I'm glad the EAC's not certifying our websites though.

(Laughter.)

COMMITTEE MEMBER ALVAREZ: Well, not yet, at least. If they're not considered voting systems, yeah, there's a whole other layer of requirements there.

COMMITTEE MEMBER JOHNSON: Whatever happened to the notion of vote by Internet?

COMMITTEE MEMBER FENG: It's still out there.

(Laughter.)

COMMITTEE MEMBER LEE: Chris, I'd like to take one moment just to go back to what you had asked about, Alice; does HAVA include any provisions relating to trying to make polling places accessible by neighborhood?

And, you know, I think there's some wiggle room there under Section 101. There's talk about using Section 101 funds to make -- to increase both the accessibility and the quantity of polling places. And so arguably, you
could look at that language, the quantity of polling places to mean, well, where do these additional polling places need to be placed? So I think that's something that could be picked up front.

COMMITTEE MEMBER ACTON: Which actually brings to mind, you know, we serve a very rural area. And, of course, the transportation is a huge issue, which brings to mind for me the idea of maybe these neighborhood, you know, accessible voting areas and just general access I guess to the ballot for people.

There's really a need for early voting to be accessible. People who are living in rural areas, there are some actually mail-in-only vote-by-mail precincts. And that means that person is not getting an accessible ballot if they need one. So there's really a need for early voting to be accessible, so that's an opportunity for them to vote privately and independently. But also the whole issue around provisional ballots and accessibility to provisional ballots, because if someone is going to their local closest accessible polling place to vote in an accessible manner, and they need a provisional ballot, because it's not -- maybe they're in a vote-by-mail-only area or what have you, or maybe their polling place is not accessible, so they didn't go to the closest accessible polling place, the provisional ballots
are not accessible, that's something we've put in our
comments. We're interested in really looking into the
idea of making provisional ballots accessible.

CHAIRPERSON REYNOLDS: Every voting -- I'm told
every voting system, accessible voting system, that's
certified has to provide for the opportunity to cast a
provisional ballot on an accessible voting system.

COMMITTEE MEMBER ACTON: What's the issue though?
CHAIRPERSON REYNOLDS: I don't know.
COMMITTEE MEMBER ACTON: Is that happening or
not?
COMMITTEE MEMBER JOHNSON: I didn't think that
that was happening. I thought most counties made you do a
paper.

COMMITTEE MEMBER KELLEY: No, not --
COMMITTEE MEMBER JOHNSON: Not in your county?
COMMITTEE MEMBER KELLEY: No.
COMMITTEE MEMBER ACTON: I think it might be
dependent on the voting system.
COMMITTEE MEMBER KELLEY: It is. We have an
electronically-certified system. We have Hart.
COMMITTEE MEMBER ACTON: I think Hart is one of
the ones that you can do the provisional.
COMMITTEE MEMBER KELLEY: And Hart provides that.
MS. KAUFMAN: So does Premier.
COMMITTEE MEMBER FENG: I thought Hart was the only one that was certified to be able to be used for early voting and for some of these other kinds of additional --

CHAIRPERSON REYNOLDS: No. I checked with the Voting Systems Technology Office about this. And their response to me was that when they certify the --

COMMITTEE MEMBER JOHNSON: They don't certify anymore.

CHAIRPERSON REYNOLDS: Approve.

(Laughter.)

CHAIRPERSON REYNOLDS: When they test and approve a system, there's going to be that component of the system that needs to be accessible to voters with disabilities and you have to be able to cast an original ballot on that. That's what I'm told.

COMMITTEE MEMBER ACTON: Is that happening in the real world?

COMMITTEE MEMBER BAZYN: It's not happening now. I mean, you can go to a provisional ballot if it's in your district. You could do a provisional ballot; but if you go out of your district, you can't.

COMMITTEE MEMBER JOHNSON: So you can't do a provisional ballot, if you're not in your polls, like --

COMMITTEE MEMBER BAZYN: I can go to one if it's
four blocks away, I can do a provisional ballot, if the
one's not working at my polling place. But I couldn't go
anywhere else in L.A. County and do it.

COMMITTEE MEMBER LEE: You should be able to.

COMMITTEE MEMBER LOGAN: I think we have the same
ability to go to any polling place in L.A. County and cast
a provisional ballot on the audio ballot booth, just as
any voter would with a paper ballot. You may not have the
same ballot style as your home precinct, but that's true
for any voter.

COMMITTEE MEMBER BAZYN: Well, that's what I'm
talking about, having this access to, whereas some of the
systems, they can plug in a card for the particular area
you live in to do a provisional ballot, like the Premier
used to in L.A.

COMMITTEE MEMBER LOGAN: Right, in early voting,
that's correct. I mean, early voting has been eliminated
for that reason.

CHAIRPERSON REYNOLDS: Right. But every voting
unit that is accessible to voters with disabilities is
supposed to have, and I'm told does, have the capability
for casting a provisional ballot.

COMMITTEE MEMBER JOHNSON: Well, they have to
test it out more, because I thought there was still
problems with that.
COMMITTEE MEMBER ACTON: That's what I thought, too. That was my impression. There was problems with provisional ballot access.

COMMITTEE MEMBER JOHNSON: And then vote-by-mail ballots are not accessible.

COMMITTEE MEMBER ACTON: Right. And that's why -- I mean, there are precincts that are vote by mail, maybe they have not enough voters for that precinct. And so how does that person get access to, you know, an accessible ballot. And so there are some counties that are doing early voting in an accessible way, but there are, from my understanding, counties that do not have accessible early voting.

COMMITTEE MEMBER LEE: Just to pick up on provisional ballots; so I think there are actually two issues. One is whether the ballot itself can be cast by voters with disabilities or with alternative language needs. But I think the second issue is also what does the process look like for filling out the provisional ballot envelope. So it's a two-step process, right? You have to fill out a provisional ballot envelope, and then you go ahead and cast your provisional ballot.

And so I think when we're talking about whether provisional ballots are accessible, the process of filling out the envelope is an important part of that. And part
of the comments that APALC submitted was to touch upon
that and basically ask, can we get translated versions of
the provisional ballot envelopes that voters can actually
fill out. I think a lot of counties use translated
reference copies that voters can look at as they fill out
an English language provisional ballot envelope. But the
voters can't fill out a translated provisional ballot
envelope to cast a provisional ballot.

And so our comments are to ask whether that's
possible and whether HAVA money could be used for that
under -- particularly under Title III monies.

And, you know, I guess there's an issue of the
maintenance of effort, but I don't -- I took a look at
what you gave me, Chris, and I don't think that
maintenance of effort precludes that. It's not whether
activity is already being done or whether an activity is
already required under law. It's tied to what's being
spent. So the State cannot decrease its spending on a
particular activity.

And so if the State is not doing something that
either it should be or can be seen as beneficial to do
voluntarily, then it's not spending any money on that,
right? And so the maintenance of effort provision
shouldn't -- in my mind, shouldn't preclude the State or a
county from spending money using HAVA dollars.
CHAIRPERSON REYNOLDS: To translate the
provisional ballot on the envelope.

COMMITTEE MEMBER LEE: Yeah.

CHAIRPERSON REYNOLDS: And translation of the
provisional ballot envelope, I guess I'd want to hear from
counties about whether there's some standardization of the
provisional ballot envelopes from county to county,
because when you're thinking about having some kind of
statewide -- I mean, is there a way to provide for one
translation of a ballot envelope forever and just have
that done and available to counties to be able to -- and
then what's the ongoing expense of --

COMMITTEE MEMBER FENG: It seems like there was a
recent standardization of the provisional ballot.

COMMITTEE MEMBER KELLEY: Each county is
different.

COMMITTEE MEMBER FENG: I thought you all went to
at least trying to pick the same colors and using the --
no, I'm wrong.

COMMITTEE MEMBER KELLEY: And I know Eugene and I
have had this conversation many times. Part of the
difficulty is if you have a county with multiple
languages, five, six, seven languages, there's really no
way to translate that envelope. You would have to
translate multiple envelopes to be able to do that. And
so standardization is an issue and also inventory quantity, how you train the poll workers is an issue. But we're going to redesign that.

COMMITTEE MEMBER LEE: And we appreciate that. But does that -- did my point about the maintenance of effort provision make sense? I think it's tied to funding. So if the State or a county is not spending money on translating provisional ballot envelopes, the maintenance of effort provision doesn't preclude that, in my view. And provisional ballots are covered under Title III, and so --

COMMITTEE MEMBER FENG: But you get at a good point, which is if currently counties are all doing it on their own and slightly differently, then there's not a maintenance of effort issue if the State says we'd like to try to standardize this, have a single translation, but that's a new thing, right? So that -- in some ways, it's maybe a good thing that everybody uses slightly different versions, because you can then justify it.

CHAIRPERSON REYNOLDS: Possibly. It depends on whether -- what I tried to look at initially is whether there is some kind of a State law requirement. Because if there's a State law requirement, then the presumption is that it's getting done; maybe that's an incorrect assumption. But is this required by State law now that
the provisional ballot envelopes be translated?

COMMITTEE MEMBER LEE: No.

CHAIRPERSON REYNOLDS: Then you're right. I mean, in that case, there's not a preexisting, and so they're not necessarily funding.

COMMITTEE MEMBER LEE: But my point was,

regardless of whether it's required or not, the maintenance effort provision is tied to what's actually being spent, right?

CHAIRPERSON REYNOLDS: True. Again, my assumption going in is that if there's a State law requirement, that there is something being done about it; and so there is a general red flag that goes up when you say, okay, I'm going to use federal funding now to do -- for instance, if we said, okay, whatever provisional voting costs the counties were incurring, since HAVA now has a provision in here that says you have to allow for provisional voting, send us a bill for those costs, and we'll reimburse you with HAVA funds. Couldn't do that.

So, arguably, you could say, well, we're going to do something special. We're going to have scented envelopes now.

(Laughter.)

CHAIRPERSON REYNOLDS: I'm just -- I don't mean to -- but something different.
COMMITTEE MEMBER JOHNSON: Careful, those aren't
going to be accessible.

(Laughter.)

CHAIRPERSON REYNOLDS: Something different that
would presumably be better or more, you wouldn't
necessarily say, well, give me the added cost of doing
that. I mean, that would be one of those tricky areas
where they would say, well, is that reasonable, is it
necessary, so on and so forth. But if it's not a state
law requirement now, and there are certainly provisional
balloting requirements in Title III, is --

COMMITTEE MEMBER KELLEY: And I would caution
against standardization, because a lot of those envelopes
are designed based on your operation and how you process
those envelopes. I know that each county is different in
that respect. So that would be difficult.

CHAIRPERSON REYNOLDS: Okay. Yeah. There are
some other hurdles to consider too. Plus, you need to
consider too that HAVA is one-time funding. So that if
you -- it's the same issue that comes up with respect to
the performance measures. If you get -- you spend money
designing it, and we spend money gathering the data, and
then what about the ongoing cost of doing whatever you
need to change your business processes to respond to it.

If it's an initial, we need to change our
business rules or business processes to take care of this, and then we can do it thereafter, that's one thing; but if it's, you know, there's going to be an added cost forever hereafter, there's a difficulty as well in requiring something through the state plan. You can't really require anything under the state plan. There's still kind of a need for there to be a state mandate of some sort or a regulation of some sort or something in HAVA that says you need to do this for us to really assure ourselves that something is going to get done, because we can't require anything in the same way you can require something via a state mandate or a regulation that you can with the state plan.

Yes.

COMMITTEE MEMBER CARSON: You know, these are all wonderful ideas, but there really isn't a lot of money to do it with, not that much money, which might be -- just imagine for the whole state. But following up on what Roz had to say, I mean, is there a way we can get to some sort of prioritization of what it is, A, you know, given the money that we think is reasonably available, without a long, involved argument with the EAC that takes five years to prioritize this stuff, that we think can be funded and developed? Because I agree with you, Roz. We've got to do
what we can do and what can be funded.

CHAIRPERSON REYNOLDS: Well, I was going to see if we could go through the comments. And actually I was going to see if we could wrap up with some discussion of whether anybody wanted to venture priorities. But we have touched on more than a few of the comments, but do we want to go through those item by item?

COMMITTEE MEMBER JOHNSON: Seems brutal.

(Laughter.)

COMMITTEE MEMBER GOLD: Let me just ask you this: Can you make these electronically available to people?

CHAIRPERSON REYNOLDS: I can email them to people?

COMMITTEE MEMBER GOLD: And might there be a way that people could electronically weigh in with you in terms of, you know, like color coding, red, love it; blue, no don't concur; you know, yellow, I want to tweak it.

MS. KAUFMAN: I'm going to be the one counting it -- since I'm going to be the one counting it, we'll do a column. And you put priority one, priority two, priority three and so forth in that column, and then I can combine the data more readily. Because if I'm being asked to sort by color, I can't do it.

COMMITTEE MEMBER GOLD: I was sort of being facetious.
(Thereupon a discussion occurred off the record.)

COMMITTEE MEMBER GOLD: Secondly, Chris, I also wanted to ask is with respect to things that are identified as non-Title III, how easy is it for you folks to come up with just a ballpark cost idea, so that, you know, we could get a sense of, you know, if we had to think about in a larger picture sense, you know, other sources of funding for them, we could at least have an idea of what you folks think they might cost.

You know, for example, some of the advisory committees, which I think are just, you know, very, very critical, to really, again, comply with the spirit of HAVA, to get a sense of what your office might think it would take to establish and maintain the advisory committees. Or is there a way when we give you back comments, we could say, "Gee, mark off, we'd love to see what this might cost, if there's an easy way to ballpark it."

CHAIRPERSON REYNOLDS: Yeah. Some of them are going to be really difficult to -- that one may not be as difficult to do, because we do have advisory committees. We have the Voting Accessibility Advisory Committee, VAAC as it's called.

Some of them like, you know, translation of...
provisional ballot envelopes. It's very difficult for me
to try to put a cost estimate on something like that,
because I don't know whether there's standardization. I
don't know whether there's -- it would just be very
difficult for me to try to put a figure on something like
that.

COMMITTEE MEMBER FENG: Can we do this: There
are some items that are -- that relate specifically to the
historical narrative or the description of what's planned.
And maybe what we could do is just go through those. And,
Kaye, if you could mark those in -- mark those out or
whatever, so that we're not trying to rank those, because
those don't have -- that's not requiring sort of a cost
analysis. That is more about kind of being more
descriptive about what's happened.

And then there are other things where we're
actually talking about items that would entail potential
expenditure of funds, and that's what we're really being
asked. So maybe even truncating those, or consolidating
some of the recommendations so that we've got just a short
list, and we're going through that. Because if -- I guess
I'm looking at this chart, and if we're using this chart
as a basis for doing ranking, this is -- these are
comments to the draft plan, but not necessarily, I think,
an appropriate list of policies that we're trying to rank
as important priorities for the next HAVA state plan.

       CHAIRPERSON REYNOLDS: Would it be best then to
       try to see whether we should go to the question of
       priorities? You know, take a quick break, come back, and
       go right to the question of priorities. And then we can
       provide this electronically, but I'm not sure the purposes
       for which -- part of the reason why I kind of wanted to
       get to these comments was to hear what others might have
       to say about them. And I'm not sure if we have enough
       time to capture those now.

       COMMITTEE MEMBER FENG: Okay.

       COMMITTEE MEMBER JOHNSON: Do we need another
       meeting? I mean, we could do something by phone, if you
       didn't want to drag us all together.

       CHAIRPERSON REYNOLDS: No, I was actually
       thinking of dragging you all together again.

             (Laughter.)

       CHAIRPERSON REYNOLDS: But there's --

       COMMITTEE MEMBER JOHNSON: And I'm happy to come.

       I'm right across the street.

       COMMITTEE MEMBER FENG: Can we do it in southern
       California?

       CHAIRPERSON REYNOLDS: There's a May 19th
       election too. And I know everybody is interested in that
       and involved in that. So --
COMMITTEE MEMBER JOHNSON: When does this have to be done?

CHAIRPERSON REYNOLDS: There's no deadline that it needs to be completed by. And so I was thinking that perhaps there are some things that -- you know, I guess -- the other thing is I'd like to get a firmer understanding of some action items that maybe we should be following up on, making sure that we haven't got forgotten anything, and go over those before we break from this meeting.

COMMITTEE MEMBER FENG: Maybe one idea would be -- again, I'm just a little bit concerned, because this is eight pages of a fairly long list. And I'm not sure how quickly we could get through getting you comments on this, but if -- in looking at this and hearing the comments that went around on the table, taking 15 minutes out and typing it onto a screen and then projecting it onto the projector, we could all talk through a much shorter list of priorities. We might be able to give you feedback on that, which gives you the ability to go forward with writing more substance into the draft plan.

And then we can go back and kind of do the vote tally on this at a later point, because this is -- a lot of these are very detailed comments, some of which are overlapping, some of which aren't, but I think that's
a -- this is a different feedback loop than what you're asking for, I think.

CHAIRPERSON REYNOLDS: Well, and in some ways, I want to make sure too that I haven't mischaracterized some things somehow in -- because I did abbreviate what was there.

COMMITTEE MEMBER FENG: Should we -- would you like to do a 15-minute break, and then we can all come back and --

COMMITTEE MEMBER HUFFMAN: Can I ask a question before break? I've been dying to ask.

I just want to ask about the recruitment of poll workers and if anywhere in any of this, if there are standards for recruitment of poll workers and how -- we talk a lot about evaluating the effectiveness based on poll workers. And when I used to walk precincts and work -- do poll watching, I found very unevenness in the people that are hired to do the work. Some of them were very sophisticated and educated, and others were home-grown and very folksy.

And I'm just wondering, as far as improving the system, if there's been any thought given to standardizing and setting some criteria for the recruitment of poll workers.

CHAIRPERSON REYNOLDS: There is a poll-worker
training guidelines that were developed under some legislation from 2004. They were put together by a task force in 2005 and then issued in 2006. And there's going to be an update of those --

COMMITTEE MEMBER HUFFMAN: That's on training though.

CHAIRMAN REYNOLDS: Right.

COMMITTEE MEMBER HUFFMAN: On recruitment criteria.

CHAIRPERSON REYNOLDS: No, not that I'm aware of. But what I was going to suggest was that there will be -- those guidelines lines will be updated. And to the extent that some of the issues that are discussed here in the comments dovetail with that effort to create those guidelines, including whether there's some best practices around recruitment, whether there's maybe -- maybe that should be an element of the guidelines themselves, even though it's not training. I mean, it's a question of where you're drawing your pool of talent from, if you will.

So we're going to be asking for comments from this group about the -- or inviting this group to make comments about those poll-worker training guidelines.

COMMITTEE MEMBER MacDONALD: When we did this survey with Debbie, we actually looked at recruitment as
And we developed a bunch of best practices for recruitment. There is a lot of variation between the counties, as you probably observed, within the counties as well. But within the counties or between the counties on how they recruit poll workers. We have some counties that actually test all poll workers before they even let them attempt to train them. So they weed them out in the beginning. We have some counties that do that and then add testing after the training to weed some people out. And we have some counties that do neither, they're just happy when they can find somebody.

(Laughter.)

COMMITTEE MEMBER MacDONALD: That's pretty much standard. But we did develop a whole bunch of best practices that -- actually, I thought they were done at one point in the guidelines. I thought they were -- maybe they're not in those.

MS. KAUFMAN: There is some talking in the guidelines about retention of poll workers and how to recruit it, but it's a minor part of those guidelines.

COMMITTEE MEMBER MacDONALD: We worked on that as well obviously.

VOTER EDUCATION & OUTREACH SERVICES DEPUTY DIRECTOR O'DONOOGHUE: We can do that.

COMMITTEE MEMBER MacDONALD: We can pull it out
and have that done as well. We have a ton of research on that data.

COMMITTEE MEMBER JOHNSON: Chris, you were mentioning that some of the poll-worker training stuff was going to be kicked over to this other process. I'm wondering if it would be helpful on this chart to have a column that kind of says we're going to be doing this about that, so we don't have to--

CHAIRPERSON REYNOLDS: Well, in particular--

COMMITTEE MEMBER JOHNSON: --so we don't have to--

CHAIRPERSON REYNOLDS: There's a suggestion from the American Pacific -- the Asian Pacific American Legal Center about improving poll-worker training and provisional ballot requirements. And I thought that there could -- that would fit within the guidelines, that there should be something in there about, you know, provisional ballot requirements, some attention paid to that. That's an issue. Just those kinds of things that might fit.

The Secretary of State from -- the California Federation of Independent Living Centers -- Foundation of Independent Living Centers. Secretary of State should outline goals and objectives for poll-worker training and evaluate the success of these programs. But, you know,
poll-worker training guidelines, the update there, that
could dovetail in some respects to that as well. So those
are the kinds of things I was talking about, that we would
want to be aware of.

COMMITTEE MEMBER JOHNSON: But I guess my
suggestion was if you had another column that just kind of
said what you were thinking to do, that was some of these
comments, and that might help us, as we wouldn't be
arguing about whether something should be done when you
are already thinking about doing it in a different context
other than the state plan.

CHAIRPERSON REYNOLDS: Okay. All right. I'll
see what kinds of things I --

COMMITTEE MEMBER JOHNSON: Not that we're
arguing, but I mean, you know.

CHAIRPERSON REYNOLDS: So --

COMMITTEE MEMBER GOLD: A robust dialogue.

CHAIRPERSON REYNOLDS: We're going to take a
15-minute break and come back and talk about the
priorities?

Is that right, everyone?

Okay. Thanks.

(Thereupon a recess was taken.)

CHAIRPERSON REYNOLDS: I think maybe we could get
started.
Hello. I'm sorry. I just kind of wanted to move us onto the next part of this and talk about the priorities. I was kind of waiting for a couple people to return, but they can catch up. We won't be done by then, I don't think.

I think the next thing we were going to talk about was what priorities people might see for the state plan.

For the Secretary of State, we do have, as I mentioned, the voting system contracts with the counties, which are approved and locked in, if you will, with the -- through the spending plan approval. And we have the VoteCal project, which is, again, in the competitive bidding process, but that is a priority we have to -- we have an interim solution, but we're duty-bound, according to the Memorandum of Agreement, to pursue the long-term VoteCal project. So those are items that I think I can say are priorities for the Secretary of State.

What other things?

COMMITTEE MEMBER JOHNSON: We, of course, want to add disability access in whatever shape and form we're able to do that, right?

COMMITTEE MEMBER ACTON: Can I just make a general comment about the state plan?

And the comments that have been submitted, that
there's some really good stuff here that maybe doesn't fit under what we're going to be asking for funding for. But to me, it makes sense to have some of this stuff in the actual state plan. Because, for example, you know, polling place access, I understand that, you know, polling place access is not a Title III billable item. But HAVA does reference polling place access in the Americans with Disabilities Act. And to me, it makes sense to have some of these components in the actual state plan, even though we're not specifically asking for funding for it, you know. And off what Margaret said, to me it did lack language and content around disability and language access.

And I just wanted to put that out there. I know we're going to prioritize. My understanding is what we're actually asking for funding for?

CHAIRPERSON REYNOLDS: Well, again, the State plan is supposed to address the Title III requirements and some other elements that have to do with managing the state plan and so on and so forth. But if you don't mind me characterizing it this way, if there's editorial comment about the importance of disability access and how that also relates -- you know, it's -- it also includes a section of HAVA that talks about polling place accessibility.
And the Secretary of State has formed a Voting Accessibility Advisory Committee. And, I mean, if that kind of, you know, language people are interested in seeing in the state plan, then I'm certainly, you know, going to bring that to the attention of, you know, the Secretary and others who ultimately craft this.

COMMITTEE MEMBER JOHNSON: Yeah. I think we'd be eager to see anything like that in the plan.

COMMITTEE MEMBER ACTON: I think it just shows an emphasis that, you know, yes, we're addressing -- we're asking for specific money on these issues, but we're taking a much more comprehensive look in addressing these issues. You know, polling place access, people can't get into the polls, they can't get to the voting systems. So, you know, I think that there's a way maybe to include some of those in the state plan.

CHAIRPERSON REYNOLDS: And with respect to disability access, then as a general issue --

COMMITTEE MEMBER MacDONALD: And what about provisional ballots, I mean we have it right here. Provisional ballots be accessible to voters with disabilities and that sort of thing.

CHAIRPERSON REYNOLDS: Yeah, I got information back from our Office of Voting System Technology about every -- let's see -- all accessible voting devices can
handle, must handle provisional voting. I mean, that's what they're telling me. When they test and approve a system, that it's got to have that capability to it.

COMMITTEE MEMBER ACTON: But does that mean it's being done? I mean, just because the machine's capable of doing it, does that mean that it's made available?

CHAIRPERSON REYNOLDS: Yeah. And that's -- I don't know if there is a problem with poll-worker communication to a voter, you know, do you need to vote? There's a unit available for casting a ballot if you'd like to use it, or, you know, would you like to cast an optical-scan ballot, or how that works, how that message gets delivered. But the provisional voting option is available on the voting units that are accessible.

COMMITTEE MEMBER ACTON: And counties are setting it up, so it is available for the voters to begin with. And then secondly, the poll-worker training issue.

CHAIRPERSON REYNOLDS: Yeah, I mean --

COMMITTEE MEMBER HUFFMAN: That would then apply to the vote-by-mail counties, or portions of the counties with a vote by mail?

CHAIRPERSON REYNOLDS: Well, I suppose -- let's see. I'm not sure. I'd have to hear from a county about -- first of all, you're right. An absentee ballot
is not -- it's a paper ballot, so it's not accessible in
the way that the voting unit makes the ballot accessible.
The accessible voting unit makes it accessible.

But how would a person -- I mean, I guess a
person could request a ballot. But if you're going to
send one out to them, do you first ask yourself whether
they're a registered voter or not. I mean, because that's
the way somebody would be required to cast a provisional
ballot. The threshold is, is this a registered voter?

And so how is that handled?

I mean, if you ever -- if you send out an
absentee ballot, can it, by definition, be a provisional
ballot when it leaves the county?

COMMITTEE MEMBER LOGAN: No. You send a
vote-by-mail ballot out to a registered voter based on the
address where they're registered to vote.

CHAIRPERSON REYNOLDS: And if someone is -- sends
in a request for a vote-by-mail ballot and they're not a
registered voter --

COMMITTEE MEMBER KELLEY: They don't get the
vote-by-mail ballot.

COMMITTEE MEMBER MacDONALD: An absentee ballot
is also not accessible.

CHAIRPERSON REYNOLDS: Well, that vote-by-mail --

COMMITTEE MEMBER MacDONALD: So long as a
provisional and absentees are essentially the same ballots. So I mean, yeah, you don't get a provisional ballot mailed to you, no.

CHAIRPERSON REYNOLDS: Right. That's what I'm getting at.

COMMITTEE MEMBER MacDONALD: You get an absentee ballot mailed to you.

COMMITTEE MEMBER LOGAN: But that's part of the provision of a provisional ballot is that it's a failsafe method in the event that you requested a vote-by-mail ballot and never received it, or you never received a sample ballot and you go to a polling place in your county and you have the right to cast a provisional ballot, so that that -- so that they can determine whether or not you were registered.

COMMITTEE MEMBER MacDONALD: And in certain counties if they're all mail ballots, you would have to go down to the registrar?

COMMITTEE MEMBER LOGAN: I don't know what the provisions are in those counties. I do know that for vote-by-mail precincts in L.A. County, your notice that tells you that you're in a declared vote-by-mail precinct informs you of your right to go to a polling place anywhere in the county and cast a ballot at a polling place, if you prefer that.

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COMMITTEE MEMBER JOHNSON: But you'd only get that if you actually thought they were really a registered voter.

COMMITTEE MEMBER LOGAN: Correct.

COMMITTEE MEMBER BAZYN: I have a question about the provisional ballot. The question about the provisional ballot that I have is shouldn't you be able to vote on a provisional ballot with the correct election things on it, like --

MS. KAUFMAN: With the correct races?

COMMITTEE MEMBER BAZYN: For an accessible voting machine. That's what I'm talking about. Like --

CHAIRPERSON REYNOLDS: Well, if the reason that you're receiving a provisional ballot is because you're going to a precinct other than the one you've been assigned to, or polling place other than the one that you've been assigned to, you are going to get the ballot that is available to that polling -- the person who votes at that polling place. So you may not get the ballot that you need. You may not be eligible to cast -- to vote on every race that's on that ballot or every measure that's on that ballot. But under State law, they will -- the county will count as many of the races, contests, as they can. And so if there's a statewide election and you go to the wrong county, they would count your vote on statewide
offices, and --

COMMITTEE MEMBER LOGAN: Correction. Right now, under state law, you have to be within your county.

CHAIRPERSON REYNOLDS: Okay. That's the only instance in which --

COMMITTEE MEMBER LOGAN: And there's a proposal to do it outside of your county. But right now you have to be within your county. You can appear at any polling place within the county that you're registered, and then any of the contests or measures that you were eligible to vote on will be counted.

CHAIRPERSON REYNOLDS: So I stand corrected. But they will count if -- as long as you're in the county where you reside, they will count as many of the contests on that ballot as possible.

COMMITTEE MEMBER LOGAN: And that's true for both -- just -- I think -- because I think -- I think your point is well taken about the different ballot styles. But I think the confusion there may be the difference between early voting and election-day voting. But when we had the electronic, the DRE early voting programs, you could go to any of the early voting locations in the county, and they had a direct connection. They could look up your voter registration and they could provide you with a ballot for your precinct, regardless of
where you went. That's never been available at polling
places on election day. That's only during the previous
eyearly voting program that had to be curtailed because of
the voting system issues.

COMMITTEE MEMBER BAZYN: Right.
CHAIRPERSON REYNOLDS: Okay. I'm just --
COMMITTEE MEMBER ACTON: So back to disability
access too, I would say the notion of the accessible voter
education materials at polling places.

CHAIRPERSON REYNOLDS: Now --
COMMITTEE MEMBER ACTON: And including looking
into the website.

CHAIRPERSON REYNOLDS: -- help me understand what
form that would take, accessible voting materials at the
polling place.

COMMITTEE MEMBER JOHNSON: Well, whatever voting
stuff you're supposed to have at the polling place should
be accessible.

CHAIRPERSON REYNOLDS: Accessible in what format?
COMMITTEE MEMBER ACTON: Braille, electronic,
alternative language.

CHAIRPERSON REYNOLDS: Now, alternative
language --

COMMITTEE MEMBER JOHNSON: Audio, video.
COMMITTEE MEMBER GOLD: Actually, you can do a
separate category on language accessibility if that would be okay. There's less overlap.

COMMITTEE MEMBER JOHNSON: Also, plain English.

CHAIRPERSON REYNOLDS: Because this could get very involved and difficult.

COMMITTEE MEMBER JOHNSON: Well, audio may work for most people, and you wouldn't need to have it in braille. The video might work for people who are deaf. And the plain English would work for people with intellectual or cognitive disabilities.

MS. KAUFMAN: Now --

COMMITTEE MEMBER JOHNSON: What do you think about plain English?

COMMITTEE MEMBER ACTON: Easy to understand. You don't want language at too high of a reading level. So it's easy to understand language for --

MS. KAUFMAN: Now, are you talking about -- for these accessible materials, are you talking about stable items that will not change between elections that perhaps could be funded with one-time funds as opposed to Susie Smith is running for dogcatcher and her qualifications are?

COMMITTEE MEMBER JOHNSON: I'm not sure what all has to be at the polling place right now.

CHAIRPERSON REYNOLDS: That includes --
COMMITTEE MEMBER JOHNSON: Could you tell me what that is?

MS. KAUFMAN: It includes a sample ballot --

CHAIRPERSON REYNOLDS: But what's required under HAVA --

MS. KAUFMAN: -- which would not be one time.

CHAIRPERSON REYNOLDS: What's required under HAVA --

COMMITTEE MEMBER ACTON: You know, I wonder if voting systems could be used for voter education materials. You know, why couldn't you use the voting -- electronic voting system for a sample ballot?

MS. KAUFMAN: I believe the part of the problem that could be contained in that use would be if it slowed down the voting process for others who needed to use the unit.

COMMITTEE MEMBER HUFFMAN: I'd like on the content, wouldn't the content have to be the same as what goes out on the sample ballot in order to --

MS. KAUFMAN: To be totally accessible, but there's a lot of other things that need to be made available at the polling place that don't include the sample ballot, such as, here's how you cast your vote on this machine. We are open from 7 a.m. to 8 p.m. on this date. Here is your Voter Bill of Rights. Here is
information about provisional voting. Here is information about why your vote-by-mail ballot dropped off at the polling place --

COMMITTEE MEMBER HUFFMAN: But all that you're talking about is not what's at the polling place. That's someplace else before you get to the polling place.

MS. KAUFMAN: No, it needs to be at the polling place. The Voter Bill of Rights has to be there.

CHAIRPERSON REYNOLDS: Yeah, at the polling place.

COMMITTEE MEMBER HUFFMAN: They may have the Bill of Rights, but, I mean, a lot of stuff you're talking about was before the date to vote.

CHAIRPERSON REYNOLDS: Well, what's required to be posted at the polling place is a sample ballot for the election. So that's going to include all the contests with names of the race that -- or the jurisdiction that the people are running for, as well as their qualifications, if they decided to put those in there or some kind of a statement in the sample ballot.

You know, information on the date of the election and the hours of the polling place that will be open, and that will change from election to election; instructions on how to vote, which may or may not change from one election to another; instructions for first time mail-in
registrants who may be required to show I.D., that shouldn't change; general information on voting rights and general information on the prohibition on acts of fraud and misrepresentation, which, again, those shouldn't change, or they may change depending on whether there's new laws.

So the sample ballot would be a very expensive thing and involved thing to do and to make completely accessible, as I understand what's being proposed here, from election to election.

COMMITTEE MEMBER JOHNSON: But don't you already make that available on the Secretary of State's -- from the Secretary of State's office or the League of Women Voters provides some -- I thought somebody was providing audio.

CHAIRPERSON REYNOLDS: We provide audio of the sample ballot.

MS. KAUFMAN: But that doesn't include local races.

COMMITTEE MEMBER BAZYN: Most counties provide it too.

CHAIRPERSON REYNOLDS: Do they?

COMMITTEE MEMBER BAZYN: As least Los Angeles County does. I don't know about all counties.

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DIRECTOR O'DONOGHUE: Voter Information Guide, not the sample ballot.

CHAIRPERSON REYNOLDS: I'm sorry. Did I say "sample ballot" or "ballot pamphlet"? I meant to say the "Voter Information Guide" is what it's called now, which includes the State races. So --

COMMITTEE MEMBER ACTON: Right. And HAVA doesn't pertain to the local races anyway. I mean, it would be great to have those accessible, but I'm saying under HAVA.

CHAIRPERSON REYNOLDS: But it says the sample ballot has to be available at the polling place. And so the sample ballot, it's going to include --

COMMITTEE MEMBER ACTON: It's going to include the local races.

CHAIRPERSON REYNOLDS: It's going to include all that information.

COMMITTEE MEMBER KELLEY: In Orange County, we offer the sample ballot at the polling place, and you can go to a booth, if you need to, and we'll cancel the booth, so they can use the audio to hear -- to get the information on the sample ballot.

COMMITTEE MEMBER ACTON: I mean, I was just going to say, because, you know, there's just -- now there's this requirement for only one per polling place, which might hold up the voting process for others.
COMMITTEE MEMBER KELLEY: That's a good point.

CHAIRPERSON REYNOLDS: And Orange County is one of the few counties that uses the Hart system, which isn't bound by the one per polling place. And just to clarify that, there is an allowance for more than one unit at a polling place in the event that the machines being used malfunctions, you have a backup unit available. So there is an allowance for more than one.

COMMITTEE MEMBER ACTON: Could that backup unit then be used for voter education?

COMMITTEE MEMBER JOHNSON: It depends on the unit it sounds like.

COMMITTEE MEMBER LEE: Well, I think that Registrar Kelley's practice in Orange County is, as said by others, it's a great best practice. And I think allowing -- trying to make that more available for counties to use is a good reason to get rid of the one DRE per polling place rule. I'll just say that very bluntly. I think we need to get rid of that.

CHAIRPERSON REYNOLDS: Yeah. And to be blunt back, the Secretary of State did go through a top-to-bottom review and has real concerns about the security of voting systems and, you know, how vulnerable they may be to, you know, problems, malware, unknown issues.
I mean, there was a recent discovery in the Premiere system of problems with audit logs and Deck Zero, if people have been following what's going on in Humboldt County. So I just wanted to make you aware of that.

COMMITTEE MEMBER LOGAN: I think the danger in that message, Chris -- I mean, I understand all that. But I think the danger in that message is that that almost comes across as saying that, okay, so if we limit it to one and only three people vote on it, we're not worried about that risk. But if we have five of them and 30 people vote on them, then we think that's a bigger issue. So I mean, I think it's a legitimate concern.

CHAIRPERSON REYNOLDS: Well, and I can't speak to all the particulars on this, because I'm not an expert on it, certainly. But I think that the use conditions that they put in place and the need to check against the paper record, those kinds of things are -- you know, that's the intent behind those measures, to make sure that you feel more comfortable, that the security issue is being addressed.

COMMITTEE MEMBER ACTON: And maybe we can go into more detail on this and how this would actually be implemented at another time, I don't know, because we could probably spend all day.

COMMITTEE MEMBER JOHNSON: Yeah, I'm sure we
could spend hours here going through the nuances of this. But I think our general notion is just, you know, to have more about disability access in this plan. And I like Gene's idea of getting rid of the one per polling place. And I understand what the concerns with are that, but this is a state plan. I mean, the plan would be that we would move to that.

CHAIRPERSON REYNOLDS: Okay.

COMMITTEE MEMBER FENG: Or to state it another way, in the letter that several of us wrote together, it is that the Secretary of State would endeavor to move to a universe where, within a particular county, everybody is voting on a uniform system. So whether that's a DRE or something else, but moving away from this notion of having two systems or more than one system and essentially creating a separate but equal situation --

COMMITTEE MEMBER JOHNSON: Well, separate but --

COMMITTEE MEMBER FENG: Separate and unequal situation for voters.

CHAIRPERSON REYNOLDS: Okay.

COMMITTEE MEMBER BAZYN: My thought on this plan, it seems like that the security has been a total focus rather than making an equal purpose for both the county training, the disability, the language access, and security, I think should be equal focus on all of them.
And if it all worked together, I think it would make a much better plan than to just focus on certain areas.

COMMITTEE MEMBER FENG: Or maybe, Chris, another way to say that on the page would be balance the security concerns, or whatever, in the report with an attention to accessibility and removing barriers for voters, because I wouldn't want you to get in trouble with people who care a lot about security.

COMMITTEE MEMBER BAZYN: No, you stated it correct, a balance is what -- you know.

COMMITTEE MEMBER JOHNSON: Yeah. And I think people with disabilities are just as concerned about security issues as people who aren't. And some of us feel really bad that we're being asked to vote on insecure systems.

COMMITTEE MEMBER LOGAN: But let's clarify that for my mind. I mean, is the issue -- when you say have everyone vote on a uniform system, am I'm hearing that correct in terms of -- I mean, I think there's -- I think the electorate enjoys the choice of different manners of voting right now. I mean, some people choose to vote by mail, because it's convenient. Some people choose to vote at early voting locations for whatever reasons. And others vote at the polls. So I'm not sure that we want to limit ourselves to a single manner of voting.
I think the uniformity is in the -- if I'm hearing correctly, is in the level of security and the privacy, that should be uniform, but that doesn't necessarily mean that everybody --

COMMITTEE MEMBER GOLD: My understanding was you meant the polling place for election day polling site voting.

COMMITTEE MEMBER LOGAN: But I'm not -- okay, so if that's what you're saying? Because I'm not sure I would concur with that, because I'm not sure that -- I mean, if you've got the same level of security and the same level of privacy, do we want to divert resources towards a bunch of physical equipment that has to be --

COMMITTEE MEMBER JOHNSON: Well, we still don't have a separate but equal system.

COMMITTEE MEMBER BAZYN: Well, the problem right now is that right now you go into a polling place, if they don't see you carrying a cane or guide dog or that you obviously have a disability, they won't even tell you about the audio system.

COMMITTEE MEMBER LOGAN: Right. And --

COMMITTEE MEMBER BAZYN: And that's what's separate but equal. They should tell everyone that they could use that system.

COMMITTEE MEMBER LOGAN: What options are
available. And I agree with that, and I think part of
that is the limitation on --

COMMITTEE MEMBER ACTON: Well, there's this
impression now that those are the insecure ones and this
other system is the secure one.

COMMITTEE MEMBER LOGAN: Right. I get that. I
guess I just want to be careful in terms of -- I'm not
sure that I would agree that the solution to that is to
have everybody voting on the same exact thing.

COMMITTEE MEMBER FENG: How about if we flip this
around and -- I mean, let's keep this on the board, but
add a sentence that says, "Or find solutions to address
the concern that many counties have dual voting systems in
polling places that create a separate and unequal
situation for voters that need assistance, special
assistance.

COMMITTEE MEMBER ALVAREZ: Can we just push that
even one step further, which is to point out that counties
now have a multiplicity of voting systems that have
different, you know, degrees of accessibility and
usability and security. Because, you know, I think we
could have a conversation about the basic security of
voting by mail, which is not something that I think has
really been well addressed in the top-to-bottom review for
example. And so -- and I would sort of push it even a
step further.

COMMITTEE MEMBER FENG: And I would concur with you that there are systems that counties currently use that because they are not -- they don't fall into the category of DREs, they were not reviewed by the top-to-bottom review, but are not accessible and may not be secure, but they were sort of left out of the analysis. So there seems to be sort of a double standard going on with how we go about auditing those systems.

I think to come back, you know, to something that's an achievable goal. This is a larger goal. And we can figure out what the right language is, but the more specific sort of measurable or deliverable, I think, comes back to the audit question, or in the performance measures, it's finding the language to say that there should be a review of the voting systems that are used in different counties with accessibility and -- with accessibility in mind, but also this more holistic approach.

Specifically, TTBR only covered what are considered to be DREs, and there was not a review of other systems. So if we're going to -- you know, if we're going to implement and audit, the audit should be --

COMMITTEE MEMBER ACTON: For every system.

COMMITTEE MEMBER FENG: -- for every system. And
it should more comprehensively look at functionality across the board. So TTBR didn't look at what the impact was on voters who needed language assistance.

Let me be more concrete.

(Laughter.)

COMMITTEE MEMBER FENG: TTBR didn't look at how opticals -- how accessible for people with disabilities or people who need language assistance, certain optical scan systems are just the optical scan paper ballot voting system is. And so while all of these preconditions were placed on the use of DREs no examination was made of other systems that are used. How usable are they? How accessible are they? How secure are they?

So we currently have this intense spotlight that is placed on one set of voting systems and virtually no examination of other systems, or it feels that way, particularly with regards to the requirements for accessibility that HAVA places on voting systems.

That doesn't help you at all?

(Laughter.)

COMMITTEE MEMBER FENG: Audits for voting systems.

COMMITTEE MEMBER JOHNSON: But I think it helps frame where we're coming from when we say these sorts of things or point this out. I think that was a helpful
COMMITTEE MEMBER FENG: I'll use the example that I know best, which is Los Angeles County's InkaVote system. It is a ballot that's this big with only numbers and bubbles on it. And so number one, for somebody who is sight challenged and/or manual dexterity challenged, taking that thing and inserting it into the recorder is not an easy thing.

Second, for somebody who needs language assistance, the pages that are on the vote recorder are in English only. So you have to take a sample ballot and line it up next to the English language vote recorder, and hope that you lined it up correctly and then hope that you marked the correct bubbles correctly.

Once you pull that ballot out, it is just a ballot of bubbles with some marked and some not, and there is no way for a voter to realistically verify whether they marked the ballot in the way that they intended to.

So on all the different sort of categories of evaluation that we have for whether a DRE is functionally serving the things that we want it to serve, we're not asking those same questions of other type of ballots.

And I would argue that even for some of the full-face ballots, you still have some of those same challenges. And we're -- again, we're not holding those...
up to a -- some kind of, you know, standard that ensures that people have just as much ability to work -- to vote on those systems as they do on the ones that are designated disability access or language access.

COMMITTEE MEMBER JOHNSON: So the InkaVote was not subject to the top-to-bottom review?

COMMITTEE MEMBER LOGAN: Yes, it was. And without getting into the specifics that you just went through, because I think your points are well taken. But I think it's important to note that in each of those polling places, there is a piece of voting equipment that does provide the audio ballot and the language assistance. So there is an option for the person who needs the language assistance and who doesn't have the manual dexterity that you're talking about.

COMMITTEE MEMBER JOHNSON: But it's not secure.

COMMITTEE MEMBER LOGAN: No, actually, that's not true. It's actually -- the audio ballot booth is not set -- it's not a DRE and it's not subject to those same conditions.

COMMITTEE MEMBER GOLD: Chris, could -- with the folks' permission, could I just talk a bit about the language accessibility issue?

First of all, in my comments, I'm going to pay homage to Eugene's hard work by concurring with many of
his ideas and basically incorporating them into my comments here. I appreciate that.

For language accessibility, as we look at the recommendations, first of all, I think there's a constellation of priorities around testing and certification, enhanced testing and certification, paying attention during testing and certification to language accessibility.

As part of that, there's this road show idea. And what I thought was interesting is that on page 1 of the document, you say the road show is Title III related, but then on page 6, you say -- and maybe I'm misunderstanding this -- you say that it's not Title III. And I would hope that it is Title III related.

CHAIRPERSON REYNOLDS: Yeah. I mean, anything dealing with the voting system would be Title III related. But the question of whether you're testing and approval process includes bringing out community groups -- and just to let people know that there is a concern about that from the Office of Voting System and Technology Assessment, in that you have to make sure that the system is secure and you're testing the system with the software that was approved from the federal laboratory and so on and so forth. And there's some logistical issues with moving around the state.
However, there used to be, under the voting system testing and approval process, an open house that was provided. And so it would be much easier to control your environment and have public access to it if it was here and there was an open house portion to the testing and approval process.

COMMITTEE MEMBER GOLD: The second constellation of issues for language accessibility are around poll-worker training. And, again, some of the enhancements or renewed emphasis on poll-worker training, not only specifically with respect to what the language accessibility requirements are under federal -- poll workers really need to know that you are supposed to provide appropriate language assistance at the polling site. But also some of the other issues that APALC has identified that have a particularly significant impact on language minority communities, such as the I.D. requirements and the provision of a provisional ballot.

So enhanced poll-worker training on all of those areas.

CHAIRPERSON REYNOLDS: Now, as I recall the APALC comments, they had to do with a reference to post-election counseling for anybody who asked for I.D. when they weren't -- when the voter wasn't required to provide it. And I was wondering how practical or how, you know, how
that would work.

COMMITTEE MEMBER MacDONALD: How do we find out, first of all, who asked for the I.D.?

COMMITTEE MEMBER LEE: Well, there are organizations that conduct their own poll monitoring. And I think many counties have precinct coordinators or roaming troubleshooters that conduct their own examination of polling places.

So, for example, in some counties a troubleshooter is assigned to ten polling places, and he or she goes around and has notes and can identify instances where poll workers are asking for I.D. when they're not authorized to do so. And so those instances can be compiled.

If I understand correctly, Dean Logan -- Registrar Logan, L.A. County does that; they conduct counseling sessions with poll workers who've been reported to ask for I.D. Is that right?

COMMITTEE MEMBER LOGAN: If we have specific information, yes.

COMMITTEE MEMBER GOLD: And so we would like to add to that also, to the extent feasible, if you can identify the person, not only counseling on inappropriate asking of about I.D., but counseling on failure to provide a provisional ballot when it should have been provided.
CHAIRPERSON REYNOLDS: And getting back to the provisional ballot, as I understood the comments too from the Asian Pacific American Legal Center, it was some people -- you want to make sure that the poll worker checks the supplemental roster, so people aren't inappropriately getting a provisional ballot. And I think that the counties have a real interest in making sure that someone doesn't get a provisional ballot if they shouldn't, and that that might have more to do with the poll-worker training guidelines. Even the I.D. requirements might jive -- dovetail, to some extent, with those, emphasizing in the poll-worker training guidelines to, you know --

COMMITTEE MEMBER GOLD: There's both sides of the issue for our communities. One is inappropriately providing a provisional ballot when you shouldn't, but then not providing a provisional ballot when you should.

CHAIRPERSON REYNOLDS: And there's the balance you have to make sure that you achieve when you say, don't give someone -- you know, if you try to emphasize to people don't give out a provisional ballot -- I mean, the simplest message is don't give out a provisional ballot when you're not supposed to. And they don't hear the when you're not supposed to part. I don't know how difficult it is. I've never trained people.
COMMITTEE MEMBER GOLD: I would maybe, you know, ask our registrars. But I know you folks train people to make some very difficult judgment calls and deal with some very technical things. I would think this is something you are training people on in terms of exactly when it is appropriate and when it's not appropriate.

COMMITTEE MEMBER MacDONALD: It's even on the ballot, so -- I mean, on the envelope, like what are the reasons for why you're giving --

COMMITTEE MEMBER KELLEY: It's more important to err on the side of the voter, as far as I'm concerned.

COMMITTEE MEMBER MacDONALD: Right. And there's more or less stringent instructions that the counties give. In some counties, somebody will just say, look, just don't argue with the voter, just give him a provisional ballot, because you don't want the -- you don't want the poll worker to stand there and go into having arguments about why, you know, this or that can't find it or whatnot. So, you know, I think the more lenient they are, the more provisional ballots you get though too.

COMMITTEE MEMBER GOLD: Just two other constellations related to --

COMMITTEE MEMBER LEE: Can I just jump in really quickly?
COMMITTEE MEMBER GOLD: Yes.

COMMITTEE MEMBER LEE: I think there are other best practices the counties can use. So in addition to really getting their poll workers well trained on checking their supplemental roster. Another thing that could be emphasized in trainings is if the roster clerk has difficulty in finding a voter's name, letting the voter search for their name, which is permissible under State law, instead of just concluding that the voter's name is not on the roster. So I think that is another best practice that helps, make sure that voter whose name is on the roster don't inadvertently get shifted to the provisional ballot table.

COMMITTEE MEMBER KELLEY: And even better, Eugene, print them upside down. You can look at them. It works.

COMMITTEE MEMBER MacDONALD: It totally works.

COMMITTEE MEMBER JOHNSON: I also think that provisional ballots are sometimes inappropriately given to people with disabilities, because we've had calls from people who say they are on the list, but because whatever is there isn't accessible to them for whatever reason or the other, that they're given a provisional ballot to fill out, rather than a regular ballot. So the same kinds of issues.
CHAIRPERSON REYNOLDS: Would it be appropriate to parenthetically put what I have here, best practices of training, or is it --

COMMITTEE MEMBER GOLD: Well, I would like to take -- sort of make best practices sort of a separate bullet under language accessibility, which is, in general, to the extent that we can make it Title III related, best practices on anything relating to language accessibility and voter information. You know, being more proactive with respect to the articulation of that, providing information about that.

COMMITTEE MEMBER MacDONALD: Could I say something about the I.D. check? Okay.

Eugene, what we actually found in the research is that the best way to figure out which poll workers are actually doing well and which ones don't, is when you have the inspector of the polling place actually fill out little rating sheets about the poll workers, because when -- I work as a rover. I've worked as a rover in four different counties, okay? When the rover shows up, everything works really well.

(Laughter.)

COMMITTEE MEMBER MacDONALD: And you're only there really quickly, because you have like 10 or 12 polling places -- people are calling you and whatnot. So
you don't see that. I mean, rarely. I've only seen once
something really horrible, and I actually had two poll
workers reassigned that morning, pulled them out and sent
them home, and got new ones. But that only happened once.

So, you know, I think the inspector, that's the
person that's there and they have responsibility.

So if the counties can just put that like check
sheet, you know, I know that Yolo, for example, does that;
that says, for example, are your poll workers -- you know,
are they good at checking the roster, because sometimes
you also have somebody who doesn't read very well or not
quickly enough at the roster, then you have a line and you
have a bottleneck, right. So are they checking the
roster? Are they checking the supplemental roster and all
of that? They have to check it up -- I mean check it off
during the day.

It also reminds them that they actually are in
charge of the polling place and they should be reminding
their poll workers to do certain things. So it actually
improves how the entire polling place works. And then you
can go through with all the time you have while your like,
you know, counting ballots and all of that, right, because
you have a lot of staff going around. And you can go
through and then figure out who should come to some of
this after it's --
COMMITTEE MEMBER LOGAN: We actually get more
comments from the inspectors about the precinct working,
but that's --
(Laughter.)
COMMITTEE MEMBER MacDONALD: Okay. We'll come
over and do your training.
COMMITTEE MEMBER GOLD: And, Chris, just the
final point I wanted to make with respect to the language
accessibility. Again, as we're looking at what's -- what
aspects of auditing and performance measures are the most
feasible and can be done in line with the resources we
have, developing performance measures for monitoring the
needs of language minority voters, and some type of audit
capability of to what extent those needs are being met
would be one of our sort of audit performance measure
priorities, top priorities.
COMMITTEE MEMBER LEE: If I could just tag team
across on language assistance.
So one of the recommendations we made was to try
to achieve full compliance with the state language
assistance laws. And there I'd point specifically to
Sections 14201 and 12303 and consider the use of HAVA
funds to achieve compliance, if funding from the general
fund is an issue.
And so with Section 14201, the first step is for
the Secretary of State to issue a list of what counties and precincts are required to provide assistance in the languages. Assistance is fairly limited. It's basically a copy of the ballot, but it needs to be posted in a polling place. And in our view, that ties into Title III requirements about posting voter information. It doesn't run into any maintenance of effort issues because no money is really being spent on the generation of that list, as far as I know. And also, I don't -- my understanding is that local election officials don't widely provide assistance in languages beyond those required by the Voting Rights Act. Some counties do. For example, L.A. County does and some parts of the county, like Long Beach. But generally speaking, across the state, I don't think this is widely done.

And so I think that HAVA money can help fill in funding gaps and doesn't run into any maintenance of effort issues, because not much money is being spent on this currently, and this wouldn't result in any decrease in State money being spent on that.

CHAIRPERSON REYNOLDS: Okay. So I'm sorry, could you run that by me again?

So issue a list of the counties that have language requirements.

COMMITTEE MEMBER LEE: So 14201, the first step
is for the Secretary of State to issue a list of which
counties and precincts, applies both at the county and
precinct level, are required to provide assistance in what
languages. The assistance is fairly limited to a copy of
the ballot, which needs to be posted in each polling
place.

And then the second step is for county and local
election officials to comply with that. So to provide a
ballot in, say, Russian or Armenian or Farsi, none of
which languages are required under the Federal Voting
Rights Act.

And so that's one of our recommendations, is for
consideration of HAVA money to be used.

CHAIRPERSON REYNOLDS: So this is -- but this is
a State law requirement.

COMMITTEE MEMBER LEE: Um-hmm.

CHAIRPERSON REYNOLDS: And to provide a ballot?

COMMITTEE MEMBER LEE: It's a copy of a ballot.

It's not a ballot that a voter could fill out, but rather
a reference copy.

CHAIRPERSON REYNOLDS: Okay. Is it a sample
ballot?

COMMITTEE MEMBER LEE: My understanding, it's
just a copy of the ballot.

CHAIRPERSON REYNOLDS: And counties aren't doing
what they're required to under State law.

COMMITTEE MEMBER LEE: Well, I think part of the issue is that there's -- as far as I know, there's not a list that's been issued by the Secretary of State.

CHAIRPERSON REYNOLDS: Okay.

COMMITTEE MEMBER HUFFMAN: How many languages do some voting places have now?

COMMITTEE MEMBER LEE: I don't know the -- it's potentially a large number of languages. There's -- under State law there's no express limit on what languages would be required.

COMMITTEE MEMBER MacDONALD: That's Section 203 of the Voting Rights Act. You may have a whole lot of --

COMMITTEE MEMBER HUFFMAN: You may have a whole lot of residents in that --

COMMITTEE MEMBER LOGAN: Right. We have six requirements under the Voting Rights Act. And as Eugene said, there are certain areas of the county where we provide limited materials in additional languages, but not to the same degree as we do for the Voting Rights Act.

CHAIRPERSON REYNOLDS: Okay. And this wouldn't be one of the things that's required as of -- under HAVA to be posted in the polling place.

COMMITTEE MEMBER LEE: Well, I think that the language of HAVA talks specifically about the posting of a
sample ballot, right, but --

CHAIRPERSON REYNOLDS: It says that you have to provide voter information, and it defines what that is, and it says specifically what that is, and it's under Section 302. And I don't know if this would be covered, but, okay.

COMMITTEE MEMBER LEE: Well, I think the argument is that -- I think that HAVA specifically talks about the posting of sample ballots.

CHAIRPERSON REYNOLDS: Yes.

COMMITTEE MEMBER LEE: And any sample ballot includes a copy of the ballot. So if you're posting just the ballot, I don't see how that is not covered under HAVA.

CHAIRPERSON REYNOLDS: So provide funding -- the argument is to provide funding to counties for meeting the State requirement.

COMMITTEE MEMBER LEE: Right, and also for the first step, for the Secretary of State to figure out which counties and precincts are covered.

CHAIRPERSON REYNOLDS: Okay.

COMMITTEE MEMBER LEE: Another recommendation that we make is about using advisory committees. So our recommendation there is to have standing language advisory committees as well as standing disability access advisory
CHAIRPERSON REYNOLDS: And we do have a VAAC, as I mentioned before. We have a Voting Accessibility Advisory Committee that includes -- Margaret Johnson is a member. Ardis Bazyn is a member.

COMMITTEE MEMBER JOHNSON: Ana is a member.

CHAIRPERSON REYNOLDS: And Ana is a member.

COMMITTEE MEMBER LEE: Okay. But there's not one for language access, as far as I know.

CHAIRPERSON REYNOLDS: No.

COMMITTEE MEMBER LEE: And so I think that advisory committee could help the Secretary of State, as well as the counties, in a variety of roles in reviewing poll-worker training programs that are submitted to the Secretary of State as part of the voting system contracts, voter education programs that are submitted as part of the voting system contracts, review -- assisting in review of voting systems.

And then lastly, we didn't mention this specifically in the letter, but I think that as part of the performance measures, I think there should be some thought given to getting qualitative data on performance. So in addition to quantitative data, qualitative data. And I think that using these advisory committees would be a great way to get that kind of input.
COMMITTEE MEMBER GOLD: Excuse me. Eugene, did you say to expand the access for persons with disabilities committee into an overall accessibility or to create a separate committee for language issues?

COMMITTEE MEMBER LEE: Our letter talked about separate -- or about standing committees for language access and standing committees for disability access.

We don't have any strong thoughts on how that should work. If there are issues in terms of how many people are in a committee and trying to convene meeting times, then perhaps separate committees are the way to go.

COMMITTEE MEMBER GOLD: I'm just saying if it is easy for you folks to do, since there have been questions raised about whether a separate committee on language accessibility would be covered by HAVA money, if it is easy, I just think for our information we'd like to know sort of an estimate of what you think that would cost the State.

CHAIRPERSON REYNOLDS: And I'm sorry, Eugene, could you mention again -- you mentioned qualitative data.

COMMITTEE MEMBER LEE: Um-hmm.

CHAIRPERSON REYNOLDS: In what context?

COMMITTEE MEMBER LEE: For performance measures. So getting -- and this would be more like anecdotal information. But to the extent that there's a way to
standardize how qualitative data is collected, then that
would be great.
And so one can envision trying to get
representation from community members across different
counties and getting some community input from each county
on how elections are being run.

CHAIRPERSON REYNOLDS: Oh, I see. Okay.

COMMITTEE MEMBER LEE: The concern is that
numbers are very powerful, but they don't often tell the
entire story. I think to fill out and flesh out what's
going on, it's important to have interviews, focus groups,
or just getting -- simply just getting input from
community members. And I think these standing advisory
committees could be an important tool in that.

CHAIRPERSON REYNOLDS: Anybody else want to add
anything?

County elections?

COMMITTEE MEMBER LOGAN: Well, I haven't
submitted a letter yet, but I will.

(Laughter.)

COMMITTEE MEMBER LOGAN: No, I mean this is two
small things, since you asked, but --

CHAIRPERSON REYNOLDS: Okay.

COMMITTEE MEMBER LOGAN: -- one is I did notice
that the reference on voting system's certification is
still throughout the draft, so I don't know if that's
going to be changed to testing and approval or not.

CHAIRPERSON REYNOLDS: It should be, yes.

COMMITTEE MEMBER LOGAN: And also -- and this is
unique to L.A. County, but the references to the
top-to-bottom review and the broad statements about three
voting systems being reviewed and all that are not really
reflective of how that process played out in L.A. County.
So I don't know that you want the plan to be that long, to
talk about how to play it out in L.A. County, but there
maybe should be a footnote or some reference to the fact
that -- I think -- and specifically, I think in the
background, it said that based on the top-to-bottom
review, three voting systems were disapproved and then
reapproved with conditions. There were, in fact, more
than three systems disapproved, and then after
considerable more time, approved with conditions.

So I just --

CHAIRPERSON REYNOLDS: These drafts were written
at a point in time. And so certain things hadn't happened
yet, and so if you have any suggestions, if you write
something up --

COMMITTEE MEMBER LOGAN: Sure, absolutely.

CHAIRPERSON REYNOLDS: -- that would be great.

So I'm going to --
Okay?

COMMITTEE MEMBER ACTON: So poll-worker training. Now, if I understood you right, that it's only an allowable expense under Title III if it's -- if there's been a new system implemented? It's a one-time-only kind of a --

CHAIRPERSON REYNOLDS: If you look at the document that's -- was in your blue folder, it's the FAO-08-011. That particular one was in response to the question that I raised about voter education of poll-worker training. At the end of that document, they say that you can conduct poll-worker training on a one-time basis.

COMMITTEE MEMBER JOHNSON: When they implement a new voting system, that one?

CHAIRMAN REYNOLDS: Right.

COMMITTEE MEMBER JOHNSON: This is a one-time training expenditure.

CHAIRPERSON REYNOLDS: Right. The expectation was -- I think, reading into it, the expectation was that you would have a voting system that you were going to implement, you were going to deploy, and you would revamp your training program for that voting system. And it wouldn't be something that you would be getting any reimbursement for on an ongoing basis. And they
reference, you know, this is not something that is
available on an ongoing basis.

So that was the reference to the
frequently -- I'm sorry, the funding advisory opinion.

COMMITTEE MEMBER ACTON: So my question I guess
is in the comments that you ranked your understanding of
how they related to Title III, or were -- you know,
there's a column of Title III related. So, you know, and
there is a few in there around poll-worker trainings that
were marked as Title III related, such as on page 4, "More
time should be spent by counties giving poll workers
hands-on training for voting systems" and "...on poll
worker sensitivity training for disabilities and language
multicultural."

CHAIRPERSON REYNOLDS: So those things are
certainly Title III related. Even the EAC acknowledges in
its opinion that they're related, but there's a
limitation. That's, I guess, the point, is that they're
saying that there should be a limitation on how much
you're going to spend in HAVA funds on these kinds of
activities.

And, frankly, the way they characterized it was
you're going to do this as a one-time. But if you're
going to do it thereafter, it's going to be minimum
requirements payment funding. That $11.6 million that I
mentioned that has been allocated to the counties at a proportionate basis through the $195 million contracts they have with the Secretary of State for reimbursement for HAVA expenses. So that's where that comes in.

COMMITTEE MEMBER JOHNSON: But isn't that just related to voting systems? That wouldn't be educational programs for other sorts of things, would it?

COMMITTEE MEMBER MacDONALD: Because sensitivity training, in the way we've always defined it, is just, you know, getting these poll workers to actually treat people properly that have, you know, language or, you know, disability needs.

CHAIRPERSON REYNOLDS: How does it tie to Title III, I think, is part of the thing you need to consider here.

COMMITTEE MEMBER MacDONALD: I thought Title III is --

CHAIRPERSON REYNOLDS: Voting systems.

COMMITTEE MEMBER JOHNSON: Voting systems.

COMMITTEE MEMBER MacDONALD: If it's language, isn't that what we've been talking about?

CHAIRPERSON REYNOLDS: There's three provisions under Title III. One is 301 for voting systems. Two is voter information at the polling places, the sample ballot and other things to be posted at the polling place, and
provisional voting rights, including the free access
system. And those are both under Section 302.
And then the final one is the statewide voter
registration database. So failing the poll-worker
training to, you know, you're deploying your voting
system, provide training there for the fact that the poll
worker is going to need to set up the system and help
people understand how to use it, break it down, and, you
know, gather in it at the end of the night, collect the
memory cards or whatever it might be, or do a tabulation,
post it, depending on what system you're using.

COMMITTEE MEMBER JOHNSON: But they also say that
you can do voter education programs for paper ballot
voting systems. That doesn't seem to be limited to
one-time only.

CHAIRPERSON REYNOLDS: No. As a matter fact,
that's not limited to one time. But what that is, is if
you're using a paper-based system that's centrally
tabulated, then there is a provision in HAVA that says
specifically you can have a voter education program around
what they refer to as over-vote protection, or I refer to
it as over-vote protection. That is, tell me how I can
prevent over voting on a ballot.

Well, if you're using a paper-based system -- if
you're using a DRE or -- yeah, DRE, it won't let you
over-vote. You cast your ballot, your choice for that race, and it moves on. So you can't over-vote. But with a paper-based system, you can over-vote.

And so HAVA says specifically, under Section 301, that we're not telling you you can't use a paper-based system. And if you want to do over-vote protection, you could use a voter education program by explaining to someone how to prevent an over-vote and how to correct their ballot, including receiving a replacement ballot.

Under California law, you can receive up to two additional ballots, if you will, you get three ballots total.

So that's what that's in reference to. And that's clearly one of those things that I pointed out to them, under HAVA there's an anticipation that you would have a voter education program. And that's why they said, okay, it's a Title III requirement. It's there under Title III, Section 301. You can do this whenever.

COMMITTEE MEMBER JOHNSON: And then the second one says that -- about posting voter information, but that doesn't seem to be limited to a one-time only either, is it?

CHAIRPERSON REYNOLDS: Again, that's a preexisting requirement in California. The Elections Code provided for the sample ballot and the date and time of
the election and so on and so forth, to be posted at the
polling place before HAVA. And so you run into a
supplanting issue.

COMMITTEE MEMBER JOHNSON: What about this last
sentence, "If the State has filed this certification,
funds can be used for educating voters on voting"?

CHAIRPERSON REYNOLDS: Again, that's the code
word for the minimum requirements payment program that I
mentioned; Section 251(b)2 is where they explain there is
such a thing as a minimum requirements payment program
where the funding is more flexible.

So again, it's you've deployed a new voting
system. You're using minimum requirements payment or
you're in those special circumstances that they mentioned,
you're either talking very specifically about posting
information at the polling place, which is a preexisting
issue in California -- or activity in California and
you're worried about supplanting. Or two, you're a
paper-based system, with a central tabulation, where you
have to use a voter education program to protect
the over-votes.

COMMITTEE MEMBER LEE: Chris, I have to get to a
4 o'clock meeting. And I just wanted to ask if there's
going to be a next meeting?

CHAIRPERSON REYNOLDS: Yes. And I'm sorry I
can't say when specifically, but obviously we haven't finished here.

I would really like the opportunity, at the next meeting, to go through these comments in more detail. Even though I captured some priorities here, I still need to see how to bring things together. And if it's possible, I can make some amendments to the draft State plan and circulate those based on what I've got here.

So, sorry, I'm going to have to say I'll keep you posted on when the next meeting might be. I'll try to certainly make it something that's far enough advance notice, so that we can do a different -- maybe southern California would be better.

COMMITTEE MEMBER LEE: My apologies. I have to leave early, but it's been a pleasure.

CHAIRPERSON REYNOLDS: Thank you very much. I really appreciate it.

COMMITTEE MEMBER LOGAN: I'd willingly host.
(Laughter.)

COMMITTEE MEMBER GOLD: Can you feed us?
(Laughter.)

CHAIRPERSON REYNOLDS: We have reached the magic hour of 4 o'clock. But do people have an interest in going a few more minutes to kind of capture more?

COMMITTEE MEMBER JOHNSON: Somebody's picking me
up, so I'd need to like step out and tell them that.

They're probably here already.

CHAIRPERSON REYNOLDS: Okay. Can we just go for five more minutes, ten more minutes? Should I wrap this up, or we kind of -- I don't want to leave it hanging here.

Okay. Some people seem like they have things they have to go do.

COMMITTEE MEMBER FENG: Well, can I suggest something that might help you. I mean, it sounds like one of the things that you're going to do is send around the chart for us to look at. But the other thing that might be helpful is if we coordinate amongst ourselves to take -- to start with the document that Eugene started redlining and edit on top of that, so that it's all in a single document. And, you know, Word now will sort of indicate when different people are marking it up.

And if people don't agree or have concerns with an edit that's being proposed, they can insert a comment, but then at least we can try to bring this process together. Because I think your challenge right now is that each of us have provided comments, but we haven't necessarily developed -- or you don't know if we've developed an agreement as a group.

CHAIRPERSON REYNOLDS: Um-hmm.
MS. KAUFMAN: Right.

CHAIRPERSON REYNOLDS: Whether, yeah, there is some consensus around. And I -- at the same time, I have to -- you know, I'm not the one who's going to say, this is what we're going to do for the state plan, Secretary. The Secretary needs to draft the state plan. So I need to provide feedback to folks here about what we're hearing, at least as far as we've come.

And I really appreciate this. I think it was a good first step. I hope others see it that way. And this is certainly something that's going to need to continue.

But I like your suggestion, in terms of -- and that was, frankly, the intent in getting a roster to people, so that they would communicate or could communicate with each other.

So if you can, you know, work with other folks. And, you know, I'll certainly stay in the loop if people have questions.

COMMITTEE MEMBER FENG: Okay. Well, several of us do communicate via email online, so we could try to facilitate something where we do a little bit of a round robin with -- starting with what Eugene has started and get a sense of whether folks are okay with that, and then editing on top of that to add additional things. And at some point, we'll have to clean it all up, but at least
then it's at least all in one spot.

COMMITTEE MEMBER MacDONALD: Aren't we all experts in that by now?

COMMITTEE MEMBER FENG: Yes.

So can I just ask the two registrars -- actually, one of them has left -- there's two.

COMMITTEE MEMBER MARTINEZ: Not the one everybody loves though.

(Laughter.)

COMMITTEE MEMBER MacDONALD: That would --

COMMITTEE MEMBER FENG: Just in terms of the May 19th election that's coming up, would you like to provide comments to the letter now or do you want to wait -- when do you have the bandwidth to deal with this?

COMMITTEE MEMBER LOGAN: I think frankly, in my world, maybe doesn't really come like that, because we have elections every week between now and November.

COMMITTEE MEMBER FENG: I guess what I'm trying to ask is, do you want first step or would you rather us go around and around and around and then give you something that you all can add to?

COMMITTEE MEMBER MacDONALD: Would you like to get the document on a Wednesday then?

(Laughter.)

COMMITTEE MEMBER LOGAN: It would be -- actually,
it would be helpful for me to circle through your groups first and then add comments after that.

COMMITEE MEMBER FENG: Okay.

MS. KAUFMAN: You want your comments on May 18th?

(Laughter.)

COMMITEE MEMBER LOGAN: I'll be at work all day on May 19th, so that might be a good day to send it.

(Laughter.)

CHAIRPERSON REYNOLDS: Rosalind?

COMMITEE MEMBER GOLD: Just two things, as far as our wrap up. First of all, it would be great, when we meet again, to hear the Secretary's perspectives on the prioritization. And then secondly, I just really want to thank you and your entire staff. This has been an absolute bear of a project. And, you know, we very much understand the constraints that you're dealing with between the Election Assistance Commission, between the HAVA requirements, as well as dealing with some very lively discussion. I just wanted to really thank you and your team very, very much for --

CHAIRPERSON REYNOLDS: Well, thank you.

COMMITEE MEMBER GOLD: -- pulling this together in the process.

CHAIRPERSON REYNOLDS: And I hope we're not making it more of a bear of a process. I mean, I know
this is something that seems to have stretched out to some extent, but there was the 2008 election cycle and then there's, you know, May 19th special elections, and then there's -- yeah. So, but thank you all for being active and participating.

(Thereupon, the Secretary of State's, HAVA State Plan Advisory Committee meeting adjourned at 4:08 P.M.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Secretary of State's HAVA State Plan Advisory Committee meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of April, 2009.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
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