

PROCEEDINGS

ACTING-CHAIRMAN KAUFMAN: All right. We're going to call this meeting to order, sans our Chair for now.

Debbie, do you want to take roll call?

MS. PARSONS: John Perez is absent.

Stephen Kaufman.

ACTING-CHAIRPERSON KAUFMAN: Here.

MS. PARSONS: Michael Bustamante.

BOARD MEMBER BUSTAMANTE: Here.

MS. PARSONS: Tal Finney.

BOARD MEMBER FINNEY: Present.

MS. PARSONS: Carl Guardino is absent.

ACTING-CHAIRMAN KAUFMAN: Okay. Do we have any public comment on matters other than 6A, which I think we will hold? Any public comment on matters that are not on the agenda?

Okay. Then let's turn to the adoption of the May 10, 2004, meeting minutes.

BOARD MEMBER FINNEY: I move that they be adopted.

BOARD MEMBER BUSTAMANTE: Second.

MS. PARSONS: I'll take roll.

Tal Finney.

BOARD MEMBER FINNEY: Aye.

MS. PARSONS: Michael Bustamante.

BOARD MEMBER BUSTAMANTE: Aye.

1 MS. PARSONS: Stephen Kaufman.

2 ACTING-CHAIRMAN KAUFMAN: Aye.

3 MS. PARSONS: Motion passes.

4 ACTING-CHAIRMAN KAUFMAN: The motion passes, the
5 minutes are adopted.

6 The next item on the agenda is changes to policies
7 and procedures. And we have proposed changes to the check
8 distribution system. Do one of you want to just review
9 where we're at with those changes?

10 MS. LEAN: That was an item that the Chair
11 actually put on the agenda. He had some concerns regarding
12 the length of time in which checks are distributed to the
13 counties, the overall process, our internal accounting
14 process, that the staff reviews the receipts and the
15 invoices that come in.

16 Once they determined as acceptable under
17 Proposition 41, they're sent to our accounting office to get
18 the appropriate information to the State Controller's
19 office. The State Controller's office then cuts a check.
20 During this whole process, the staff notifies the executive
21 staff when the claim schedule goes over to the State
22 Controller's office and when it comes back. So we have a
23 two-week period that we know when it's going to come and
24 that's all we've done, because there's anticipation that
25 there might be a press conference to release the check.

1 The Chair had some concerns over how long the
2 checks were held before press conferences were potentially
3 scheduled. And that was the change that he wanted to
4 consider.

5 ACTING-CHAIRMAN KAUFMAN: And the issue was the
6 checks coming straight back to staff here, correct?

7 MS. LEAN: Correct.

8 ACTING-CHAIRMAN KAUFMAN: As opposed to going
9 through the Secretary of State's office?

10 MS. LEAN: Right.

11 BOARD MEMBER BUSTAMANTE: No. The question was,
12 and I don't want to speak for the Chair, but as I recall,
13 the issue for him was that you had a check that was ready to
14 be disbursed and let to the counties, but there was a two
15 week, sometimes month, period of time where the counties
16 weren't receiving their funds because there was a hold up in
17 the executive office.

18 MS. LEAN: That's correct, for the release of the
19 checks.

20 BOARD MEMBER BUSTAMANTE: Okay. So I think what
21 he was concerned about was the ability to actually release
22 the checks when those funds are available, as opposed to
23 waiting for two weeks to a month for the counties to receive
24 their checks.

25 MS. LEAN: Yes. From conversations that I had

1 with the Chair, he suggested that he be notified when the
2 checks come in and be part of the approval for distribution.
3 Because that wasn't done, it was -- internally, you've kind
4 of given the authority over to the staff to disburse and to
5 let go and to send it out to the counties, but we've been
6 waiting for executive office approval in order to send them.
7 And so I think he wanted to be part of the process.

8 ACTING-CHAIRMAN KAUFMAN: And this two-week
9 reference though is merely just a procedure that's basically
10 been in place, it's not set in stone anywhere, which is why
11 it's been extended beyond that?

12 MS. LEAN: I don't understand the question.

13 ACTING-CHAIRMAN KAUFMAN: Well, the idea that the
14 checks were being held pending a press conference, was there
15 anything formal setting that out?

16 MS. LEAN: No.

17 BOARD MEMBER BUSTAMANTE: In fact, remember there
18 was a matrix that they gave us at the last meeting, and some
19 of them were two weeks, some of them were 30 days, some of
20 them were 40 days. You know, maybe we should hold this
21 until John gets here, he would probably want to have it put
22 on.

23 ACTING-CHAIRMAN KAUFMAN: Well, unfortunately, we
24 have a fairly large agenda, we wanted to hold 6 until the
25 Chair showed up and get through the rest of it.

1 BOARD MEMBER FINNEY: Did we have a staff
2 recommendation with respect to this item? Weren't you
3 supposed to look into something? I think I recall that we
4 had asked that the staff look into the issue. Because it
5 sounds like the action that is desired by the Chair is to
6 include him in the distribution process on behalf of the
7 Board.

8 ACTING-CHAIRMAN KAUFMAN: And I don't know what
9 kind of formal action is even required on our part, because
10 no policy per se is setting forth these procedures, other
11 than making a request, if that's how it happened. I don't
12 know whether that will solve the problem, but it will at
13 least make this Board aware of when payments are coming in.

14 BOARD MEMBER FINNEY: And you don't think we need
15 to take action to do that?

16 ACTING-CHAIRMAN KAUFMAN: Well, we, as a Board,
17 can certainly make a motion requiring that the staff notify
18 the Chair when the checks are received so that the Board,
19 the Chair slash the Board, will be aware of that. But I
20 don't know that there is anything mandating anything beyond
21 that in terms of the check being released. Unless we want
22 to institute some formal policy for doing that.

23 MR. STUART: No, not at this time.

24 ACTING-CHAIRMAN KAUFMAN: Yes. This Board would
25 have to adopt a formal policy for releasing checks once they

1 arrived back at the Secretary of State's office, if we
2 wanted to do anything beyond notification, which we can do.

3 BOARD MEMBER FINNEY: Well, maybe we should just
4 do that, we should have the staff write something up so that
5 at our next meeting we can approve it. And that way we are
6 addressing the issue for the Chair in his absence. What do
7 you think about that?

8 BOARD MEMBER BUSTAMANTE: This was an item that
9 John felt pretty strongly about, I would like for him to
10 have input on it.

11 BOARD MEMBER FINNEY: Okay. Well, why don't we
12 try and maybe hold off on that until after 6 and see if he
13 makes it. If he doesn't, then I'll make a motion if he
14 hasn't shown up by that time.

15 ACTING-CHAIRMAN KAUFMAN: Okay. We'll defer that
16 to the end of the agenda.

17 Then why don't we skip Number 6 right now and go
18 ahead to Item 7, which is adoption of the Conflict of
19 Interest Code.

20 MS. LEAN: It's actually not the adoption, I
21 wanted to give you guys some updates on where that is.

22 The Conflict of Interest Code is now out for
23 public comment. It's a 45-day public comment period to end
24 on August 16th. So at your August 19th meeting, you can
25 formally adopt it, unless we get some public comment to

1 change the proposed Conflict of Interest Code.

2 ACTING-CHAIRMAN KAUFMAN: Okay. So we are still
3 on schedule for the last scheduled meeting, that process has
4 gone ahead?

5 MS. LEAN: Correct. It's gone over to the Office
6 of Administrative Law, it's been published in the registry,
7 and it is out now for public comment. It's on the website.
8 Notices were sent out to the Board members and to our
9 interested parties and to the counties letting them know it
10 is out there for public comment. To date, I have not
11 received any public comment on the Conflict of Interest
12 Code. I did include a copy in your package for you to
13 review. You reviewed it last time, approved it through the
14 Board, so at the next meeting if we do not get any public
15 comment, then it can be formally adopted by the Board.

16 ACTING-CHAIRMAN KAUFMAN: Any comments from Board
17 members on that?

18 BOARD MEMBER FINNEY: No comment.

19 ACTING-CHAIRMAN KAUFMAN: Okay. Item 8. Is there
20 any other business from Board members or staff that needs to
21 be addressed other than the matters that we have to get back
22 to on the calendar?

23 MS. LEAN: I might just remind the Board when the
24 next meeting will be. The next meeting will be August 19th,
25 10:00 a.m., the Secretary of State's office in the

1 auditorium.

2 ACTING-CHAIRMAN KAUFMAN: Okay.

3 BOARD MEMBER FINNEY: What about 5B?

4 ACTING-CHAIRMAN KAUFMAN: There you go, we did
5 skip something.

6 Okay, let's go to Item 5B on the agenda, which is
7 the Adoption of Standard Agreement Language between the VMB
8 and the Counties regarding the HAVA Section 102 money and
9 the 3-to-1 match.

10 MS. LEAN: Correct. This item was brought up at
11 the February 9th, 2004, meeting. It was a policy question
12 that came before the Board. And at that meeting the members
13 were asked to consider a policy question of whether or not
14 the VMB should pay on unpaid invoices up to or equal to a
15 county's funding award, with a promise from the county that
16 they will pay their county match once they have received the
17 HAVA 102 money. A motion was made by Michael Bustamante and
18 seconded by Chair Stephen Kaufman to approve the policy. He
19 requested that staff develop some specific language on what
20 that agreement would be.

21 At the last meeting there was some questions as to
22 adding some additional language in there. There was not an
23 attorney present at the last meeting to address your
24 concerns. We do have a new staff attorney, his name is
25 Steven Stuart, and he will be taking over the VMB legal questions.

1 It is before you again today because we did have
2 some questions that were raised at the last meeting, but
3 without counsel here to address them and to get a good
4 interpretation of what you wanted, we need you to look at it
5 again and give us some feedback.

6 ACTING-CHAIRMAN KAUFMAN: Okay. I had a couple
7 comments so I'm just going to start. I know Mr. Finney had
8 some particular concerns last time that he wanted to ask
9 staff counsel about, if you recall. There was some conflict
10 resolution issues I think that you had raised at the last
11 meeting? You don't remember that?

12 BOARD MEMBER FINNEY: I'm trying to recall that
13 discussion now.

14 ACTING-CHAIRMAN KAUFMAN: I think there was some
15 concern about what if there was an issue that had to be
16 resolved and how that issue would be resolved, whether there
17 was a mechanism for it. I don't recall the exact nature of
18 your concerns, but that was the general nature of it.

19 MS. PARSONS: Tal, you said it's missing language
20 if there's a dispute situation. That was all you said about
21 it.

22 BOARD MEMBER FINNEY: I'm trying to recall. I'll
23 have to think about it while you're doing your thing.

24 ACTING-CHAIRMAN KAUFMAN: Okay. Well, I just had
25 a couple of comments on the draft language that I don't

1 think is particularly substantive. But I did note that in
2 paragraph 3, it talks about the HAVA money being provided,
3 but it doesn't really say what it's to be used for. So I
4 thought that for clarity that at the end of that paragraph
5 it should indicate that it's to be used for the purchase of
6 new voting equipment, whichever way we want to characterize
7 the HAVA grant.

8 And then I also thought for clarity's sake that in
9 paragraph 4 we start again at the top of the second page
10 with furthermore. I thought that should be made a separate
11 paragraph since paragraph 4 seems to deal with the
12 determination by the Secretary of State section, and the
13 next part seems to deal with a determination by this Board.

14 And I also think there's a typo in the second line
15 there where the word and should be as determined by the
16 Secretary of State. There's the lawyer in me coming out.

17 So former paragraph 5 would become paragraph 6.
18 And I think that in the second line there where it's saying
19 consideration of the determination by the VMB that the
20 counties should be awarded money from the Voting
21 Modernization Fund, I would like to reference the paragraph
22 above there and say as set forth in paragraph 5 herein, so
23 that it's clear that it really needs to be the determination
24 that's made above and not somewhere else.

25 And then at the end of paragraph 6, sub D, where

1 we make reference to paragraph 4A through 4C, that should be
2 changed to 6A through 6C.

3 BOARD MEMBER FINNEY: How do you do that one
4 again? Describe that last one again?

5 ACTING-CHAIRMAN KAUFMAN: Paragraph 6, sub
6 paragraph D, it makes reference to conditions set forth in
7 paragraphs 4A through 4C, which is numbered. I'm assuming
8 that's referring to A, B, and C above; is that correct?

9 MS. LEAN: I didn't write this language, I don't
10 know.

11 ACTING-CHAIRMAN KAUFMAN: Steve?

12 MR. STUART: I'm not sure either.

13 ACTING-CHAIRMAN KAUFMAN: I'm assuming that the
14 reference to the conditions set forth in paragraphs 4A
15 through 4C inclusive of this agreement is a reference to the
16 preceding subparagraphs A, B, and C which appear in there.

17 MR. STUART: That's how I would read it.

18 ACTING-CHAIRMAN KAUFMAN: Okay. So in that case
19 it should --

20 MR. STUART: Be changed to 6.

21 ACTING-CHAIRMAN KAUFMAN: Yes, it should be
22 changed to 6.

23 So with those changes, unless there's any issue
24 with those, I guess I would look for a motion to approve the
25 language of this agreement from either of you.

1 BOARD MEMBER BUSTAMANTE: I will move the
2 agreement.

3 BOARD MEMBER FINNEY: And I will second it.

4 MS. PARSONS: Okay, I'll take roll.

5 Stephen Kaufman.

6 ACTING-CHAIRMAN KAUFMAN: Aye.

7 MS. PARSONS: Michael Bustamante.

8 BOARD MEMBER BUSTAMANTE: Aye.

9 MS. PARSONS: Tal Finney.

10 BOARD MEMBER FINNEY: Aye.

11 MS. PARSONS: Motion passes to adopt this
12 agreement.

13 BOARD MEMBER FINNEY: And when I remember my
14 issue, I'll just bring it up with staff and we'll put it
15 into the minutes for our next meeting. It was more
16 important to me that I just had it on the record.

17 ACTING-CHAIRMAN KAUFMAN: That's fine. I just
18 wanted to make sure the agreement addresses your concerns.

19 BOARD MEMBER FINNEY: Yes, we're fine.

20 MS. LEAN: So we can move forward and put this out
21 on our website for counties who are eligible for 102 money
22 to use this agreement?

23 ACTING-CHAIRMAN KAUFMAN: Correct.

24 MR. STUART: As modified.

25 ACTING-CHAIRMAN KAUFMAN: As modified by the

1 changes enunciated here, which you have copious notes about,
2 correct?

3 MR. STUART: Right.

4 ACTING-CHAIRMAN KAUFMAN: Okay. That takes care
5 of Item 5B. Unless we have any information to believe that
6 our Chair is on the way, I think we should proceed with Item
7 Number 6A. And we do have a lot of folks here who want to
8 address the issue, but I would like to start with Jana
9 providing the staff report on the issue.

10 MS. LEAN: The staff report was given to all of
11 the members in their packages and the audience. I just
12 wanted to make sure that you understand that this is
13 information that you requested the staff to pull together,
14 it's long and drawn out, but I think it's relevant that we
15 go through it. So it might take a while. If you have any
16 questions, please stop me and we'll continue.

17 ACTING-CHAIRMAN KAUFMAN: Okay, yes. We would
18 like you to go through it in detail so everybody understands
19 the issue and is making an informed decision.

20 MS. LEAN: The Voting Modernization Board was
21 established by the passage of Proposition 41, with the
22 Voting Modernization Act of 2002, which was approved by the
23 voters in March of 2002, to sell 200 million in general
24 obligation bonds to assist counties in the purchase of
25 updated voting systems.

1 The general authority of the VMB was given to
2 reject any application for fund monies if they deemed it
3 inappropriate, excessive, or that does not comply with the
4 intent of the article.

5 The Act established the criteria of eligibility
6 for the counties to apply for the money. One of them I'd
7 like to highlight is that funds shall be used to purchase
8 systems certified by the Secretary of State for use in
9 California.

10 The VMB adopted policies and procedures that
11 weren't necessarily exclusively set in the Act. So while
12 the Act is specific regarding the eligibility requirements
13 for counties to apply for the funds, it does not specify the
14 operating procedures on how the funds will be applied for,
15 timeframes in which the funds will be distributed, or the
16 amount to be allocated to each county. The Secretary of
17 State's office developed proposed operational procedures,
18 policies and procedures for the VMB. These procedures were
19 adopted by the VMB at their first meeting on June 6th, 2002,
20 which all of you were present.

21 ACTING-CHAIRMAN KAUFMAN: I was not present.

22 MS. LEAN: No, you were not present.

23 The Act does not indicate a schedule for
24 allocation of funds to counties to modernize their voting
25 systems.

1 At the first meeting of the VMB, staff prepared a
2 schedule of options for distribution of the funds. The
3 staff recommended that the VMB adopt an aggressive schedule
4 to get their funds to the counties as quickly as possible.
5 This recommendation was largely based on the fact that
6 counties would need an aggressive schedule to modify and
7 convert systems, to train staff in order to have a
8 successful conversion. Most specifically, nine counties in
9 California, Alameda, Los Angeles, Mendocino, Sacramento, San
10 Bernardino, San Diego, Santa Clara, Shasta, and Solano, were
11 under an order of the federal court to convert their
12 Votomatic and Pollstar Punch Card systems by the March 2nd,
13 2004, Presidential primary election.

14 After receiving the staff recommendation and
15 strong support and public comment at the meeting, the VMB
16 adopted an aggressive schedule to allocate and distribute
17 these funds.

18 The VMB considered many different options to
19 allocate funds to the counties. Once a formula was adopted,
20 the formula allocations were established for each county,
21 all 58 counties were invited to apply for the formula
22 funding allocation. The staff developed a proposed funding
23 application and procedural guide establishing a process for
24 counties to apply for the funds and explaining the
25 requirements to the counties to secure their funding.

1 Although the Act did not specifically require that new
2 voting systems be accessible to the disabled community, the
3 VMB requested that counties supply in their application an
4 accessibility plan describing how their county will use the
5 funds allocated by the Act to provide a meaningful voting
6 opportunity for people with disabilities.

7 All 58 counties have submitted and the VMB have
8 approved their application for funding consideration thus
9 preserving their formula allocations. A Project
10 Documentation Package detailing a county's voting system
11 conversion plan and executed vendor contract is required as
12 part of the application process. By requiring a detailed
13 conversion plan and filing a vendor agreement before any
14 fund awards and distributions occur, the VMB is able to
15 ensure that the new voting systems and county plans to
16 convert would comply with specific requirements of the Act.

17 As of May 2004, 21 counties have submitted their
18 Project Documentation Package that have been issued funding
19 award letters authorizing disbursement of specified funding
20 allocations.

21 The Act also requires for the VMB to obtain the
22 Governor's approval on a Statement of Plans and Projects.
23 The Statement of Plans and Projects outlines the allocation
24 criteria and specifies that the county allocations be set
25 aside until the county submits a complete and acceptable

1 Project Documentation Package in order to establish a
2 payment schedule for the county.

3 There was an issue of a paper trail. At the onset
4 of the VMB meetings, it was determined that the paper trail
5 eligibility requirement was satisfied because all certified
6 direct recording DREs and touchscreen voting systems being
7 sold for use in California could produce a paper audit trail
8 for the ballot images stored in the unit and results could
9 be produced for a manual tally for recounts. This
10 interpretation of the paper audit trail requirement as
11 applied to the administration of the Act is a policy of the
12 VMB.

13 In November 2003, the Secretary of State
14 instituted a directive that required all counties who used
15 certified DRE units to retrofit their DRE units with an
16 Accessible Voter Verified Paper Audit Trail, an AVVPAT, a
17 paper record of a ballot printed for the voter to confirm
18 before a voter casts his or her ballot, by July 1, 2006.

19 On April 30th, 2004, the Secretary of State
20 superseded this directive by issuing orders decertifying the
21 use of DRE voting systems in California, but allowed the
22 counties to use DREs in the March 2nd, 2004, primary, and to
23 use these systems in the November 2nd, 2004, general
24 election, if they either installed an Accessible Voter
25 Verified Paper Audit Trail before the November election or

1 if they met 23 security measures identified in the order.

2 The order decertifying all DRE systems in
3 California has a requirement that all new DRE voting systems
4 purchased in California after the April 30th, 2004,
5 directive must include an AVVPAT. While the decertification
6 of all DRE systems in California does not necessarily impact
7 prior actions taken by the VMB, it could impact the counties
8 who have not began the modernization of their voting
9 equipment, because it essentially places a moratorium on the
10 sale of DRE units in California until vendors can develop
11 and obtain certification for systems that meet the AVVPAT
12 requirement.

13 Given the Act's requirement that all fund monies
14 only be used to purchase systems certified by the Secretary
15 of State, until there are DRE units certified with an AVVPAT
16 component, the VMB will only be able to consider approving
17 allocations for counties who are upgrading to optical scan
18 voting system technology.

19 The Act does not specifically require any voting
20 equipment being purchased with the funds be accessible to
21 voters with disabilities. However, the VMB has recognized
22 the importance of the accessible voting equipment. As of
23 January 1, 2003, California state law under Election Code
24 Section 19227 requires the Secretary of State to adopt
25 regulations in consultation with representatives of the

1 blind, of consumer organizations and other experts, to make
2 all voting systems, except absentee systems, equally
3 accessible to persons who are blind or visually impaired.
4 This section further requires that at each polling place at
5 least one voting unit be accessible, as established for use
6 under the adoption of the Secretary of State regulations, to
7 individuals who are blind or visually impaired. Compliance
8 with this section is only required by local agencies and/or
9 counties. If sufficient funds are available via funds
10 received from the proceeds of the Voting Modernization Bond
11 Act of 2002 or the federal funds made available to purchase
12 new voting systems.

13 Any voting system equipment purchased by a county
14 before the effective date of January 1, 2003, would not be
15 required to comply with this section until such time as it
16 upgrades or replaces any already-purchased voting equipment.
17 However, a question has arisen whether any county using
18 funds from the Act to purchase new voting equipment after
19 the January 1, 2003, deadline would be required to comply
20 with this code section.

21 The Help America Vote Act does have a requirement
22 with the specifications of one DRE in every polling place be
23 adopted by January 1, 2006. It should be noted that the new
24 reformed Elections Systems Commission is required under HAVA
25 to develop voluntary voting system guidelines. These

1 guidelines could potentially impact the certification
2 process of voting systems in California and would affect the
3 VMB in as much as the VMB would only be able to allocate
4 funding awards for purchasing of certified voting equipment.

5 Recognizing that modernizing voting systems is a
6 large undertaking, the VMB has allowed counties to submit
7 voting system conversion modernization plans to be
8 implemented in phases. The policy to allow the counties to
9 upgrade their voting equipment in multiple phases requires
10 the counties adhere to state and federal accessibility
11 requirements within one of their phases. Elections Code
12 19227(b) requires that funds received from the Act shall be
13 used for the purpose of placing one accessible voting unit
14 in each polling place. It could be asserted that funds from
15 the Act will be used to comply with the state law as part of
16 the phased county voting equipment modernization. Elections
17 Code 19227(b) does not say that all funds received from the
18 Act shall be used to comply with the accessibility
19 requirement.

20 The VMB has awarded phased approach funding for
21 eight counties. Funds made available to the counties from
22 the VMB in multiple phases will be used to upgrade their
23 voting systems and the accessibility requirements.
24 Therefore, the phased approach for upgrading voting systems
25 still appears to be acceptable under the newly imposed state

1 law requirements for accessibility.

2 It also should be noted that the Secretary of
3 State has not developed the regulations that need to be in
4 place in order for vendors to meet the accessibility
5 requirement and no certified systems are currently available
6 that have the accessibility requirement in them.

7 ACTING-CHAIRMAN KAUFMAN: Jana, before you go on,
8 on that one point. Is there anything under foot or for the
9 Secretary of State to adopt these regulations, are they in
10 process? We know they're not in existence yet. Do you know
11 anything about that?

12 MS. LEAN: I'll turn that over to our --

13 MR. STUART: No, I don't have any information that
14 those have been started or are pending. I can go make
15 further inquiry on that, but my understanding is that, no,
16 they're not.

17 ACTING-CHAIRMAN KAUFMAN: Okay.

18 BOARD MEMBER BUSTAMANTE: John, do you have any
19 additional information?

20 MR. MOTT-SMITH: They have been issued as
21 standards, but they have not been through the regulatory
22 process.

23 BOARD MEMBER BUSTAMANTE: So what is the timeline
24 at the Secretary of State's office to lift the moratorium?

25 MR. MOTT-SMITH: For what?

1 BOARD MEMBER BUSTAMANTE: What is the timeline of
2 the Secretary of State that the administrative office is
3 using to deal with this?

4 MR. MOTT-SMITH: To --

5 BOARD MEMBER FINNEY: To lift the moratorium?

6 BOARD MEMBER BUSTAMANTE: Well, I'm sorry, not the
7 moratorium, but to get the certification?

8 MR. MOTT-SMITH: His latest directive was all
9 machines by July 1, 2006.

10 BOARD MEMBER BUSTAMANTE: No, no, I meant
11 internally. I mean you have a process that you have to go
12 through, right?

13 MR. MOTT-SMITH: To make the regulations for the
14 standards?

15 ACTING-CHAIRMAN KAUFMAN: I think we're talking
16 about two different things. One, there's the regulations,
17 and, two, is whether or not certain counties are made
18 certified for November.

19 BOARD MEMBER BUSTAMANTE: Oh, okay, I was thinking
20 more about the machines than the counties.

21 MR. MOTT-SMITH: As was I. And, in fact, I'm not
22 understanding.

23 BOARD MEMBER BUSTAMANTE: No, no, I think he and I
24 weren't --

25 ACTING-CHAIRMAN KAUFMAN: I was focused on the

1 first, I thought you were going somewhere else, but maybe
2 not.

3 BOARD MEMBER BUSTAMANTE: Yes. So where are you
4 guys?

5 MR. MOTT-SMITH: The current environment is that
6 all DREs, as Jana summarized, were decertified. Some were
7 recertified, based on acceptance of security measures. And
8 that process we have recertified all but three of the 10
9 counties. Seven of the ten counties have been recertified
10 previously.

11 BOARD MEMBER BUSTAMANTE: Seven of the counties.

12 MR. MOTT-SMITH: We're very close to the other --
13 we have procedural obstacles, not any other obstacles that
14 I'm aware of for the other three. So in November we
15 anticipate all ten of the DRE counties that were not TSX
16 counties to be certified.

17 ACTING-CHAIRMAN KAUFMAN: And they are recertified
18 to the extent they're operating under the security measures
19 that have been dictated by the Secretary of State, correct?

20 MR. MOTT-SMITH: Correct.

21 ACTING-CHAIRMAN KAUFMAN: It's not that the
22 machines themselves are meeting all the new requirements,
23 it's that other safeguards are being put in place to provide
24 the security protection?

25 MR. MOTT-SMITH: Correct. And just to be clear,

1 the Voting Systems Panel did vote to recommend that the
2 changes necessary to recertify the TS system in three
3 counties, Alameda, Plumas, and Los Angeles, be recertified.
4 But that process hasn't been finalized yet by a certificate
5 from the Secretary.

6 MS. LEAN: I think the question that was brought
7 up in the staff report is just to make the Board aware that
8 the other 38 counties that haven't moved forward yet, they
9 cannot purchase a DRE system at this time. There is no
10 certified system that meets all of the accessibility
11 requirements.

12 ACTING-CHAIRMAN KAUFMAN: Regardless of what is
13 certified for November --

14 MS. LEAN: Correct.

15 ACTING-CHAIRMAN KAUFMAN: -- because that is based
16 on a host of other factors?

17 MS. LEAN: Correct. I just want to make that
18 point clear.

19 ACTING-CHAIRMAN KAUFMAN: And I didn't mean to
20 take you off track, but I wanted to deal with the issue as
21 it came up.

22 MS. LEAN: Okay. At the December 17th, 2002, VMB
23 meeting, the VMB adopted a January 1, 2005, deadline for
24 counties to receive approval from the VMB for Project
25 Document Package. Under this adoption, counties that did

1 not receive approval by the January 1, 2005, deadline
2 forfeited their approved allocations. The Act does not have
3 a deadline for when the funds need to be approved or
4 distributed to the counties. This deadline was adopted as
5 policy and could be reconsidered by the VMB at any time.

6 I just want to also say that HAVA does have a
7 deadline for compliance of their voting system standards and
8 that punch card systems be replaced by January 1, 2006.

9 The actions of the VMB to assist the counties in
10 meeting the new federal voting system requirements is good
11 public policy. However, the VMB is not strictly obligated
12 to do so under the act.

13 The Voting Modernization Fund and the HAVA Federal
14 Trust Fund are not linked together. Both HAVA and the
15 Voting Modernization Bond Act were passed to further the
16 overall advancement of modernizing voting systems, and while
17 both Acts afford money to be distributed to counties to
18 upgrade their voting systems, they are independent of each
19 other.

20 The requirement for counties to submit a Project
21 Documentation Package has been established by the VMB and
22 the adoptions of the Funding Application and Procedural
23 Guide, the Statement of Plans and Projects signed by the
24 Governor, and it is also incorporated in the VMB's
25 requirement for funding in documents submitted to the Voting

1 Modernization Finance Committee and to request a full-money
2 investment loan to fund the Voting Modernization Fund.

3 The requirement for counties to submit Project
4 Documentation Packages to the VMB has been incorporated as
5 standard practice. The Act does not specify deadlines to
6 allocate the fund monies. Therefore, the VMB could
7 reconsider the January 1, 2005, deadline for counties to
8 submit their Project Documentation Packages.

9 I do know we have quite a bit of public comment,
10 if you would like to take that before we consider the
11 options, or would you like to go over the options?

12 BOARD MEMBER FINNEY: Real quick before we do
13 that. I found my conflict issue, I thought it was this, not
14 the other one. But it's satisfied. I was concerned about
15 the linkage of HAVA and of this Board. And that was
16 addressed in a way that it was satisfied.

17 ACTING-CHAIRMAN KAUFMAN: Okay. Actually, I think
18 it might be appropriate for you to run through the options
19 so that members of the public can make reference to the
20 options when they come up.

21 BOARD MEMBER FINNEY: That's a good idea.

22 MS. LEAN: Okay. The VMB may want to consider the
23 following options before determining if a new project plan
24 deadline should be instituted.

25 The first option. The VMB could maintain the

1 adopted January 1, 2005, project plan deadline and motion
2 that counties that do not receive approval by the January 1,
3 2005, deadline forfeit their approved allocations.
4 Maintaining this date could allow the VMB to conduct
5 additional funding rounds for money not used by the
6 deadline. The VMB could reallocate these reverted funds to
7 counties who have converted to new systems by the deadline
8 but did not receive enough funding to pay for their new
9 system. In addition, the reallocated funds could be used to
10 offset the costs to counties that have already converted to
11 DRE systems that are required to upgrade to a new AVVPAT
12 requirement.

13 Option Two. The VMB could maintain a January 1,
14 2005, deadline, but allow counties who have not entered into
15 a contract with a vendor to upgrade their new voting system
16 to submit a status report on their modernization progress.
17 If the county's status report is determined by the VMB to
18 show sufficient progress in modernizing their voting
19 systems, the VMB could allow the county to reserve their
20 approved allocation funding amount on a case-by-case basis.
21 This option would not be construed as a blanket exception to
22 all counties, but it could allow the VMB some leeway with
23 specific counties before their funds are reverted for a
24 second funding round.

25 Option Three. The VMB could move the deadline to

1 July 1, 2005, to better align with the counties with meeting
2 the HAVA deadline. By moving the deadlines to July, it
3 could assist the counties in their planning process to
4 secure vendor contracts at least six months before the HAVA
5 January 1, 2006, compliance deadline. On average a county's
6 Request for Proposal process to enter into a contract with a
7 vendor takes approximately six months to complete. By
8 establishing this deadline, the VMB could compel the
9 counties to meet the HAVA requirement and accelerate their
10 voting system modernization process in California.

11 Option Four. The VMB could move the deadline to
12 January 1, 2006, to assist with HAVA. By moving the
13 deadline to January 1, 2006, it could assist counties who
14 have been reluctant to begin modernizing their voting
15 equipment due to the uncertainties of the standards to be
16 applied to the new voting equipment technologies. The
17 decision to decertify all DRE voting systems which
18 essentially placed a moratorium on the sale of these systems
19 in California could also warrant the extension. With more
20 than half of the 58 counties yet to begin upgrading their
21 voting systems and the counties vigorously supporting moving
22 the deadline, extending the deadline to January 2006 could
23 be considered a practical option.

24 Option Five. The VMB could move the deadline to
25 January 1, 2006, making the compliance deadline consistent

1 with HAVA. By requiring each county to submit an Interim
2 Status Report on their modernization status until they
3 fulfill the Project Documentation Package requirement.
4 While this option may not address the VMB policy for
5 counties to move on an aggressive schedule, it would allow
6 the counties additional time before they're required to
7 upgrade to new voting technologies and to assure funds are
8 being used appropriately.

9 This option could enable the VMB to address the
10 concerns of the counties regarding the unknown availability
11 of certified systems to be sold in California or giving them
12 the ability to insure that counties are moving forward in
13 development of their voting system modernization plans.

14 ACTING-CHAIRMAN KAUFMAN: Does staff have a
15 recommendation on one of those options?

16 MS. LEAN: At the last meeting. Staff would like
17 to continue its recommendation to move the deadline to
18 January 1, 2006.

19 ACTING-CHAIRMAN KAUFMAN: Which would be Option
20 Four?

21 MS. LEAN: Correct.

22 BOARD MEMBER FINNEY: Or Five.

23 MS. LEAN: Or Five.

24 ACTING-CHAIRMAN KAUFMAN: Why don't we actually
25 take a few moments to see if any of the Board members have

1 questions of staff, and then we'll turn to members of the
2 public on this issue.

3 And I guess I just wanted to begin by asking, it
4 seems to me that the tension here is between the Board's
5 role in trying to encourage counties to move forward in
6 their efforts to upgrade their voting systems, and yet we
7 don't want to deprive anybody who is caught right now with
8 the issue of the decertification of voting machines. We
9 don't want to cut anybody off from potential funding.

10 Do you have any thoughts on that issue as relates
11 to input you may have received from the counties or the role
12 of this Board?

13 MS. LEAN: Well, where we were back in December of
14 2002 is not where we are now. With the new voting
15 equipment, voting system equipment that was certified for
16 use then and that is certified for use now is totally
17 different. So it might be something for you if you want to
18 consider that. I have gotten numerous phone calls and you
19 have in your package quite a few letters from the counties
20 that have not submitted Project Documentation Packages to
21 extend the deadline. And that is why staff recommended the
22 movement of the deadline.

23 ACTING-CHAIRMAN KAUFMAN: Mr. Bustamante.

24 BOARD MEMBER BUSTAMANTE: I just had a couple
25 questions myself.

1 There's no expiration on the Act, right?

2 MS. LEAN: Correct.

3 BOARD MEMBER BUSTAMANTE: Are there companies out
4 there right now that can meet essentially the Secretary of
5 State's directive?

6 MR. MOTT-SMITH: No, not as of yet.

7 BOARD MEMBER BUSTAMANTE: When? Do you guys have
8 a timeline on that, do you have any idea?

9 MR. MOTT-SMITH: We're going to Nevada in
10 September where a system potentially meets the directive.
11 But the process would be that they then would have to come
12 forward in California for certification.

13 BOARD MEMBER BUSTAMANTE: Are there any machines
14 in the country that would meet the Secretary of State's
15 directive?

16 MR. MOTT-SMITH: It's our understanding that there
17 are machines out there that have not yet come forward to --

18 BOARD MEMBER BUSTAMANTE: So the answer is no?

19 MR. MOTT-SMITH: -- certification. There is a
20 certified system being used in Nevada which we're going to
21 look at.

22 BOARD MEMBER BUSTAMANTE: Federally certified?

23 MR. MOTT-SMITH: Federally certified. Federally
24 qualified.

25 BOARD MEMBER BUSTAMANTE: So basically the

1 counties right now don't have an option to purchase their
2 voting equipment, the 38 counties that currently don't have
3 it yet?

4 MR. MOTT-SMITH: There is not one certified in
5 California at this time.

6 BOARD MEMBER BUSTAMANTE: So what options do
7 counties have today? Or do they have an option?

8 MR. MOTT-SMITH: They have an option that they can
9 either get an optical scan system and supplement that when
10 it's there with a paper trail or whatever kind of
11 accessibility device, or they can wait for a paper trail DRE
12 device.

13 BOARD MEMBER BUSTAMANTE: So counties today have
14 an option? They have the option to be able to upgrade their
15 voting equipment with an optical scan?

16 MR. MOTT-SMITH: They can do that. They still
17 have until 2006 to --

18 BOARD MEMBER BUSTAMANTE: Right. Which is just a
19 DRE in a polling place, not necessarily a wholesale
20 replacement of all voting equipment with DREs?

21 MR. MOTT-SMITH: Correct. And it's not
22 necessarily a DRE in a polling place. There are optical
23 scan technologies that have come forward that provide
24 accessibility.

25 BOARD MEMBER BUSTAMANTE: Okay.

1 ACTING-CHAIRMAN KAUFMAN: But a county taking that
2 option would be going through a two-step process potential
3 instead of a one-step process and a potentially costly
4 second step?

5 MR. MOTT-SMITH: Well, Jana's report identifies as
6 an example Mendocino where they purchased an optical scan
7 system and as soon as a paper trail system is available for
8 the accessibility, that's part of the contract involved.

9 BOARD MEMBER BUSTAMANTE: Just going off that
10 point, I mean most counties, in fact, are really taking a
11 two-step process in terms of their acquisitions of voting
12 equipment, right?

13 MS. LEAN: Well, of the 20 that have come forward
14 to use them so far, eight of them are doing that, the phased
15 approach.

16 BOARD MEMBER BUSTAMANTE: But I mean even a lot of
17 the counties are opting for two types of machines. I mean a
18 lot of them are, right?

19 MS. LEAN: From the counties that I have talked to
20 since the decertification order came out, that's what most
21 of them are leaning towards.

22 MR. MOTT-SMITH: But I think of the applications
23 that we've had, most of the ones that were brought scan
24 equipment for counties that purchased the systems after the
25 trigger date for eligibility for federal money, but before

1 HAVA is actually enacted. So it was a reimbursement of a
2 system that they had already purchased. Since then, most of
3 the counties are looking at touchscreen DRE technology.

4 BOARD MEMBER BUSTAMANTE: Okay.

5 ACTING-CHAIRMAN KAUFMAN: Mr. Finney.

6 BOARD MEMBER FINNEY: I don't have a question, I'm
7 ready to hear from the public.

8 ACTING-CHAIRMAN KAUFMAN: Okay. Let me just note
9 before we ask people to come up, the letters that have been
10 received, I'll run through them. And, Jana, if I miss any,
11 let me know. And I will just state for the record that
12 without exception, every one of the counties that submitted
13 something in writing were in favor of extending the deadline
14 either to January 2006 or some of them said to at least July
15 of 2005. We received comments from Imperial County, Sonoma,
16 El Dorado, Fresno, San Benito, San Luis Obispo, Tuolumne,
17 Yuba. Is that it?

18 MS. LEAN: And we also received one from Santa
19 Cruz at the prior meeting.

20 ACTING-CHAIRMAN KAUFMAN: So why don't we ask the
21 counties who would like to be heard on the matter to come up
22 and I'll call you in order. And I would ask as you come up
23 if you could perhaps address the issue that we raised here,
24 and that is your county's thoughts about undertaking a two-
25 step process and why that may or may not work in your

1 particular situation, if you were required to go forward at
2 this point and submit documentation.

3 So let's start with Fresno County, Brandi Orth.

4 MS. LEAN: Can we ask also that they state their
5 name and spell it for the court reporter?

6 ACTING-CHAIRMAN KAUFMAN: Did you all hear that?

7 We'll give everybody two minutes.

8 Good morning.

9 MS. ORTH: Good morning. My name is Brandi Orth
10 and I'm representing the Fresno County Clerk/Registrar of
11 Voters. Thank you for allowing me a few minutes of your
12 time this morning.

13 I believe that in your packet there is a copy of a
14 letter from Fresno County Clerk Victor Salazar. And I'm
15 here to reiterate Fresno County's position.

16 In June 1999, after a 15-month process, Fresno
17 County purchased the Diebold optical scan voting system. It
18 has performed well and accurately for Fresno County.
19 However, we now find ourselves in a dilemma. Fresno fully
20 intends to comply with the HAVA requirements regarding
21 voting accessibility. However, with the current controversy
22 surrounding the touchscreen voting systems, Fresno County is
23 hesitant to choose this technology as its solution.
24 Especially in these severe budgetary times, we want Fresno
25 County to reap the benefits from the Prop 41 monies,

1 however, currently there is no other technology certified by
2 the state that meets the accessibility requirements.
3 Therefore, we request that your panel consider extending the
4 deadline for the application of the Prop 41 monies.

5 And I would be happy to answer any questions you
6 might have.

7 ACTING-CHAIRMAN KAUFMAN: Questions?

8 BOARD MEMBER BUSTAMANTE: How do you currently
9 meet the needs of the disabled community?

10 MS. ORTH: We have audio tapes from our office.
11 We also provide assistance by our poll workers, according to
12 election law, when they come into the polling place.
13 Obviously an optical scan is a paper marked ballot.

14 BOARD MEMBER BUSTAMANTE: I thought there was an
15 option in the optical scan that allowed also to address some
16 disability issues?

17 MS. ORTH: Well, we did see a product last year
18 that does allow a handicapped individual to mark a paper
19 ballot and then for that paper ballot to be put into the
20 Accuvote system into a regular voting system. That system,
21 that product has not been certified by the state yet. That
22 is something that we would be very interested in learning
23 more about.

24 BOARD MEMBER BUSTAMANTE: Thank you.

25 ACTING-CHAIRMAN KAUFMAN: Thank you very much.

1 Next, Terry Hansen from Yuba County.

2 MS. HANSEN: Thank you, Board Members. My name is
3 Terry Hansen from Yuba County. And I have the unique
4 benefit of being newly elected to this position. I say that
5 with tongue in cheek.

6 I do have the letter that I submitted to your
7 panel on May 25th, and in that letter I alluded to the very
8 limited resources that Yuba County has. There were
9 anticipated deep, deep budget cuts. Well, those are no
10 longer just a possibility, those have actually occurred in
11 Yuba County. We have had multiple staff layoffs, we have
12 absolutely no IT individual, Information Technology
13 individual, allocated to our elections division that solely
14 supports elections.

15 So I sincerely hope that you will consider our
16 request for an extension, because we simply don't have the
17 resources to move forward by the December 31st deadline. We
18 intend to fully comply with the HAVA requirements and wish
19 to do so on a responsible, financially responsible basis.
20 So I would support, I believe it's Option Four.

21 If you have any questions, I would be glad to
22 respond.

23 ACTING-CHAIRMAN KAUFMAN: Thank you.

24 MS. HANSEN: Thank you.

25 ACTING-CHAIRMAN KAUFMAN: William Schultz from El

1 Dorado County.

2 MR. SCHULTZ: Good morning, Panel Members. My
3 name is William Schultz, I'm the Recorder/Clerk/Registrar
4 for El Dorado County, just getting the job the 9th of
5 January.

6 You have my letter, I'm not going to read it. But
7 the one thing that seems to be universal through this
8 process is with the November election coming up, some of the
9 counties, as you just heard, have kind of strained resources
10 due to budgetary demands and whatnot. It just seems that
11 it's almost a disservice to the public for us to try to get
12 this done by December 31st. You know, we could probably do
13 it if the panel stays with what they have, but Option Four,
14 Five, or Six, it seems reasonable. And also even the state
15 has requested an extension and received one for the voter
16 registration method. So that's all we're doing is just
17 trying to find a reasonable time of action.

18 And I would be happy to answer any questions.

19 BOARD MEMBER BUSTAMANTE: Did you mean Options
20 Three, Four or Five?

21 MR. SCHULTZ: What did I say?

22 BOARD MEMBER BUSTAMANTE: You said Four, Five or
23 Six.

24 MR. SCHULTZ: Yes, Three, Four, or Five.

25 BOARD MEMBER BUSTAMANTE: So Option Three or Four

1 or Five would be acceptable?

2 MR. SCHULTZ: Yes.

3 BOARD MEMBER BUSTAMANTE: Thank you.

4 ACTING-CHAIRMAN KAUFMAN: Actually, I had one
5 question just before you leave. Did El Dorado County have a
6 going forward plan in place before the Secretary of State's
7 decertification orders?

8 MR. SCHULTZ: No. We were preparing to do the
9 Project Documentation Package, however. But there really
10 hasn't been any solid companies to go to for the project. I
11 mean it makes it very difficult on the counties when there
12 is really no certified company to approach. It puts us in a
13 dilemma.

14 ACTING-CHAIRMAN KAUFMAN: I understand. Thank
15 you.

16 MR. SCHULTZ: Thank you.

17 BOARD MEMBER BUSTAMANTE: Oh, I have one question.

18 ACTING-CHAIRMAN KAUFMAN: Sir, before you walk
19 away.

20 BOARD MEMBER BUSTAMANTE: So before the Secretary
21 of State decertified the machines, what were you thinking
22 about doing? Because, I mean, the decertification has only
23 been months long, this process has been ongoing now for two
24 years. So what were you thinking about before the
25 decertification process?

1 MR. SCHULTZ: Well, we were simply going to put
2 together a Request for Proposal to whatever companies were
3 certified.

4 BOARD MEMBER BUSTAMANTE: I guess my question is
5 more along the lines of why the delay?

6 MR. SCHULTZ: You know, I think part of the
7 problem is staffing. You know, it's not really an excuse,
8 but the County before was preparing to do this, but then the
9 Registrar decided to retire, I came on board. You know,
10 trying to get my hands around it, but then all of a sudden
11 these other things came into play, so now, you know, we're
12 at the point where, okay, now what do we do.

13 BOARD MEMBER BUSTAMANTE: Thanks.

14 ACTING-CHAIRMAN KAUFMAN: Thank you.

15 Next is Conny McCormack from Los Angeles County.

16 MS. MCCORMACK: Can I wait until the end?

17 ACTING-CHAIRMAN KAUFMAN: Sure.

18 MS. MCCORMACK: So I can decide whether or not I'm
19 going to speak.

20 ACTING-CHAIRMAN KAUFMAN: Ms. McCormack spoke at
21 our last meeting, so we'll just put her at the end and you
22 can decide if you want to come up.

23 Diane Fridley of Lake County.

24 Did I pronounce your name correctly?

25 MS. FRIDLEY: Fridley.

1 Hello, I'm Diane Fridley from Lake County. I am
2 the Registrar of Voters. I would like to ask for your Board
3 to consider an extension, and I opt for Option Number Four.

4 We are a Mark-A-Vote county, so we already have
5 optical scan. So we don't have to do Phase 1, but we do
6 have to do the Phase 2 with the DRE machine. There is no
7 machine out there obviously available to us, but we would
8 like to look at a system that is compatible with our optical
9 scan, which there isn't one just yet.

10 And also I would like to say that I'm from a small
11 county, we only have around thirty-one to thirty-two
12 thousand registered voters. There is only two permanent
13 employees in our office, and quite frankly I'm very busy.
14 We haven't had time to put together a package and there
15 isn't anything to put together. I would like to request the
16 extension so I would be able to put together a package for
17 your Board.

18 Are there any questions?

19 ACTING-CHAIRMAN KAUFMAN: Thank you.

20 Next is Janice Atkinson from Sonoma County.

21 MS. ATKINSON: Good morning, Janice Atkinson,
22 Assistant Registrar of Voters, County of Sonoma.

23 Sonoma County is also a Mark-A-Vote optical scan
24 county, and as Diane Fridley was mentioning, we've already
25 changed to optical scan long before there was a Voting

1 Modernization Board or any funds to do so. Our only hurdle
2 now is to have the one unit per precinct for the impaired to
3 vote on. And I am concerned that if we go forward with the
4 plan as it is, I mean obviously there is no system right now
5 to comply with our needs, that the funds will be used by
6 counties going through the step one which we've already done
7 at our own expense and there will be no funds left for those
8 counties who need to comply with the HAVA requirements.

9 Of all the counties, I think that I ask for the
10 most conservative extension. Sonoma County was only asking
11 for maybe a three- to a six-month extension in the time
12 necessary. And I think possibly what Diane was saying or
13 perhaps your question to Bill Schultz, as to, you know, why
14 the delay and what have you guys been doing. I don't have
15 the luxury of Bill Schultz saying that I just started on
16 January 9th, since I've been around a long time, but just if
17 we could review the last six or eight months, these counties
18 have been doing October 7th elections, the November
19 election, the March 2nd primary. In my county we had an
20 April election or July election, I've got two elections in
21 August, and I'm preparing for the November election. To try
22 to put together our package, do an RFP, review the systems,
23 make a selection of some concept, because that's all we have
24 at this point in time, and enter into a contract by January
25 1 is truly a virtual impossibility.

1 So we're here today to really ask you to consider
2 extending this deadline to give the counties enough time and
3 to give the vendors enough time to get these systems
4 developed, but to give the counties enough time to prepare
5 their packages, review the systems that are waiting to be
6 certified and make a selection.

7 ACTING-CHAIRMAN KAUFMAN: Ms. Atkinson, what year
8 did Sonoma County go to an optical scan system?

9 MS. ATKINSON: 1983.

10 ACTING-CHAIRMAN KAUFMAN: '83?

11 MS. ATKINSON: 1983.

12 ACTING-CHAIRMAN KAUFMAN: Wow.

13 MS. ATKINSON: I thought you were going to ask me
14 what year I started at Sonoma County and I was going to
15 decline.

16 (Laughter.)

17 ACTING-CHAIRMAN KAUFMAN: What manufacturer?

18 MS. ATKINSON: The manufacture was Mark-A-Vote
19 voting system. And we were about the second or third county
20 to go on to that voting system.

21 ACTING-CHAIRMAN KAUFMAN: How many voters do you
22 have in Sonoma County?

23 MS. ATKINSON: Roughly 250,000, which, by the way,
24 40 percent are currently permanent absentee voters. So, you
25 know, 40 percent of my voters will continue to vote on this

1 system regardless of any future decisions.

2 BOARD MEMBER BUSTAMANTE: Do you have an election
3 in the spring next year?

4 MS. ATKINSON: Well, we never know until we read
5 it in the paper.

6 BOARD MEMBER BUSTAMANTE: Right.

7 MS. ATKINSON: There currently is a petition being
8 circulated in our county that would force a special
9 countywide election in March.

10 BOARD MEMBER BUSTAMANTE: Okay.

11 BOARD MEMBER FINNEY: Do you have any others on
12 the radar?

13 MS. ATKINSON: I have 44 school districts. There
14 are a lot of them looking at March because they don't want
15 to get lost in the November election.

16 ACTING-CHAIRMAN KAUFMAN: Thank you.

17 MS. ATKINSON: Thank you.

18 BOARD MEMBER FINNEY: I have been meaning to ask
19 that question of our other counties too. I am going to
20 assume that in today's day and age you can't predict what
21 you're going to get.

22 ACTING-CHAIRMAN KAUFMAN: Do you want to ask them?

23 BOARD MEMBER BUSTAMANTE: Yes.

24 For El Dorado, do you have an election in the
25 spring?

1 MR. SCHULTZ: Yes.

2 BOARD MEMBER BUSTAMANTE: Fresno.

3 MS. ORTH: Actually there is a good possibility.

4 BOARD MEMBER BUSTAMANTE: But you don't have
5 anything scheduled right now?

6 MS. ORTH: Not at the moment.

7 BOARD MEMBER BUSTAMANTE: Then Yuba?

8 MS. HANSEN: Yes, there is a good possibility.

9 And I did read in the Sacramento Bee that Governor
10 Schwarzenegger has a possibility of a special election to
11 address the legislation for part-time legislators. And
12 after October I believe it when I hear special elections.

13 BOARD MEMBER BUSTAMANTE: But right now you have
14 nothing scheduled?

15 MS. HANSEN: We have some of our special
16 districts.

17 BOARD MEMBER BUSTAMANTE: Oh, you do have
18 something scheduled, okay.

19 ACTING-CHAIRMAN KAUFMAN: And Lake County?

20 MS. FRIDLEY: No, we do not have one scheduled.

21 ACTING-CHAIRMAN KAUFMAN: Okay. If in the future
22 speakers could address that issue when they come up.

23 Laurie Cassady from Butte County.

24 MS. CASSADY: Good morning. I'm Laurie Cassady,
25 Assistant County Clerk/Registrar of Voters for Butte County.

1 And I'm representing Candace Grubbs, the County Clerk.

2 Butte County is currently an optical scan county,
3 we use Mark-A-Vote. We have been using that system I
4 believe since the mid '90s.

5 Our plan included going totally touchscreen, but
6 when the decertification occurred for the touchscreen
7 systems, we couldn't move forward. We would benefit if you
8 would consider Option Four or Five as this would provide the
9 additional time for vendors to complete their development
10 and certifications for touchscreens.

11 BOARD MEMBER BUSTAMANTE: What's wrong with Option
12 Three?

13 MS. CASSADY: Pardon me?

14 BOARD MEMBER BUSTAMANTE: What's wrong with Option
15 Three?

16 ACTING-CHAIRMAN KAUFMAN: That's the July 2005
17 option.

18 MS. CASSADY: I'm just a small staff and if we
19 could move to 2006 that would be better. I have, including
20 myself, five people in the office. We run a lot of extra
21 help. Unlike Sonoma County, we don't have the special
22 elections, but we still, you know, are busy trying to put on
23 different programs within the office.

24 BOARD MEMBER BUSTAMANTE: Didn't you say though
25 January 1 would allow the vendors? I thought she gave

1 January 1 --

2 MS. CASSADY: Well, yes. What I meant was it will
3 allow everybody time to get -- I don't know how long it's
4 going to take vendors to get certified, and if there are
5 other systems out there being developed.

6 BOARD MEMBER BUSTAMANTE: So your concern is not
7 so much the time, although that's a consideration, your
8 concern is more about the certification process?

9 MS. CASSADY: Right.

10 BOARD MEMBER FINNEY: How many voters do you have
11 registered?

12 MS. CASSADY: 114,000.

13 BOARD MEMBER FINNEY: And you are anticipating
14 elections in the spring?

15 MS. CASSADY: No. Not at this time.

16 BOARD MEMBER FINNEY: Okay. Thank you.

17 BOARD MEMBER BUSTAMANTE: Thank you.

18 ACTING-CHAIRMAN KAUFMAN: Kathleen Smith from
19 Nevada County.

20 MS. SMITH: Good morning, Kathleen Smith.

21 First of all, I'd like to say I've been in my
22 position since July 1st of this year.

23 ACTING-CHAIRMAN KAUFMAN: Congratulations.

24 MS. SMITH: Thank you. I was not previously in
25 the Elections office for Nevada County. I come at this from

1 a City Clerk perspective and municipal elections and special
2 elections in a very small town.

3 We have not submitted a letter to the Board
4 advocating anything, so I'm here today to tell you that we
5 are in support of Option Four or Five . And I like to
6 approach things especially in problem solving matters from
7 an interest-based approach, and it certainly seems to me in
8 the best interest of the voters and the vendors and the
9 administrators and leaders that are having to implement the
10 mandates, federally and statewide, to have sufficient time
11 to get certified, to propose as many options as they can
12 that can possibly be certified so that we have choices. And
13 I think that's certainly in the best interest of voters.

14 I know that my predecessor was focusing on going
15 to touchscreen voting, and, of course, when I came on board
16 on July 1st, that couldn't fly at this point. We are an
17 optical scan county and our vendor does have a HAVA
18 compliant product that is certified, however, that's our
19 only choice at this point.

20 I would advocate for flexibility and the time to
21 make informed decisions. Thank you.

22 And I'm very afraid of the questions you might ask
23 me since I'm so new. I have been informed by Placer
24 County's Brian Ocker, who has been a great support and
25 mentor to me, we share districts, that we do have a March

1 election in Nevada. I'm not even certain my staff knows
2 that. I have three people on my staff that have never gone
3 through a presidential election. Thank you very much.

4 ACTING-CHAIRMAN KAUFMAN: Actually, I only have
5 one question and I'm not sure I want you to answer, and
6 that's what were you thinking when you took the job?

7 (Laughter.)

8 MS. SMITH: I would share with you though in
9 regards to the earlier question about why not the July date
10 and why the preference to go through January, it's just
11 that, people are getting out of elections, not into them.
12 And so in my office, I've seen a great deal of transition.
13 We have not filled a position because we could not find a
14 qualified elections, senior elections, official to take that
15 spot. And I was told that I have always been good in a
16 snake pit, so maybe that's why I'm here.

17 ACTING-CHAIRMAN KAUFMAN: Well, welcome.

18 MS. SMITH: Thank you.

19 ACTING-CHAIRMAN KAUFMAN: Thank you and good luck.

20 MS. SMITH: Thank you.

21 ACTING-CHAIRMAN KAUFMAN: Last it's Conny
22 McCormack from LA County.

23 BOARD MEMBER FINNEY: We've inspired you, hey,
24 Conny?

25 ACTING-CHAIRMAN KAUFMAN: And as I mentioned,

1 Conny appeared at our last meeting and is here again. And
2 I'm going to just throw something out that I think I asked
3 you last time but would ask you to reiterate again, given
4 that LA County has the largest amount of funding allocated
5 to it and frankly has the largest potential need for funding
6 and would benefit the most by a round two of funding and a
7 reallocation, perhaps you could just address that issue and
8 your feelings on that while you're up here discussing the
9 extension of time.

10 MS. MCCORMACK: I thank you for that. I'm Conny
11 McCormack, Los Angeles County Registrar and County Clerk,
12 and as of last Thursday, President of the California
13 Association of Clerks and Elections Officials.

14 And at that meeting, I'll just say that we did
15 honor -- we have had registrar retirees this year, more than
16 ten percent of the states' registrars in the past six months
17 have left. Most recently, as of Monday night, Michelle
18 Townsend of Riverside County. As some colleagues have
19 mentioned, this is not a profession that people are flocking
20 to. And I haven't met Kathleen yet, but I'm planning on
21 asking her the same question, why would anybody want to do
22 this. After 23 years this week in this profession, I have
23 no other skills.

24 (Laughter.)

25 MS. MCCORMACK: So I can't go anywhere else.

1 I would like to mention before commenting on how I
2 feel about the extension, because I'm a big supporter of it,
3 and even all the way to the most liberal interpretation of
4 it, but this concern about meeting requirements of having
5 systems that are certified and that will work is a national
6 issue. And I just came from the International Association
7 of Clerks and Elections Officials conference in San Antonio
8 yesterday, it's still going on through today. And at that
9 meeting, the four members of the Federal Elections
10 Assistance Commission were there on the panel, as well as a
11 panel of NIST, National Institute of Standards and
12 Technology, that are charged by the new Federal Elections
13 Assistance Commission with formulating standards for voting
14 equipment, new standards. The earliest they are going to be
15 able to issue their recommendations for standards
16 countrywide is next July. I mean we're talking July of '05.

17 Frankly, even if counties managed to get some
18 equipment certified before that, there may be a situation
19 could arise, and I think it's really likely that some of
20 this equipment will have to go back through another level of
21 certification or another level of invention to meet
22 potential certification standards that will come out of
23 those federal recommendations. They are not requirements,
24 they are voluntary standards, but I think 40 of the states,
25 almost all of the states have adopted them as a requirement,

1 including California. So whether or not they are voluntary
2 standards or not, in effect they are requirements because
3 the states say they won't certify a piece of equipment
4 without that federal standard being met.

5 So there is so much uncertainty in the whole
6 country that both the four members of the Elections
7 Assistance Commission and the registrars and clerks from
8 around the country were addressing these questions with the
9 eye of not having the capacity of beating the HAVA
10 requirements frankly. Clearly, though, Congress doesn't
11 want to open that up. But the bottom line is the
12 noncompliance possibility in this country on January 1st,
13 2006, in my opinion, with 3,000 election jurisdictions I
14 think it's going to be lucky if a third of them are
15 compliant. It's just going to be very difficult for
16 everyone to reach that compliance in the best of
17 circumstances and I don't care about any delays.

18 And as was mentioned, because HAVA had deadlines
19 that were blown by the Congress and the President in
20 appointing the appointees, nine months was lost. It's kind
21 of ironic or unfair that those deadlines were allowed to be
22 missed, but yet these deadlines are, and those were
23 statutory in the federal law, by these certain dates people
24 would be appointed and this is what they wanted. And so
25 it's going to be I think one of the defenses in the court

1 cases that are going to become of noncompliance, well, why
2 did counties have to comply when other -- you know, it's
3 going to be a real problem.

4 Now, I have echoed what everyone else said,
5 because everyone wants to comply. LA County wants to
6 comply. We've been in a quandary on how we're going to
7 comply, we're really concerned about it, frankly, and I
8 think so is everyone in the room. So I would certainly
9 argue for the most liberal extension possible, even to
10 possibly Number 6, but certainly to Number 5, recognizing,
11 of course, then you would have the capability -- you can
12 always open up the deadlines, but this is more flexible when
13 we've got a deadline with a time certain and I'm just glad
14 that it looks like maybe our primary aspects will be moved
15 back to June. That's going to give us a tremendous
16 difference in time for the March primary. In terms of LA,
17 we may have a cross election countywide in '05. I hope not,
18 but the cross on the seal there is a big controversy in our
19 county right now. So the turmoil and it's very real and now
20 they're out collecting signatures, so we could have a
21 countywide election next year. I certainly hope not.

22 The bottom line is everyone in this room needs the
23 extension. It's really hard for the large counties. So
24 when you asked, Mr. Bustamante, about why some of the others
25 counties hadn't done it, they do have a little bit easier

1 time with smaller to get a proposal together, but, again,
2 not any easier if you don't know if anybody is certified to
3 get a response. And our county has always required
4 certified vendors to respond. And I think that is what most
5 people are saying. It's really hard to put a proposal out
6 there and say, promise me you're going to do it.

7 And on the statewide data base, there's three
8 states in the last week have signed contracts with a promise
9 me you're going to do it vendor. And I hope our state
10 doesn't do that, but that's the kind of thing that's going
11 on in elections right now where vendors are promising sign a
12 contract and we'll deliver what you want. And we'd kind of
13 like to do it the other way, you know, show us that you can
14 do the product especially with our complexity with thousands
15 of ballots in other languages. We've always required the
16 vendor prove it and that's been a problem.

17 So that's probably more than you wanted to hear,
18 but that's sort of an update nationally, that this angst
19 isn't just in this room, it's in the whole country and it's
20 being addressed to the Federal Election Assistance
21 Commissioners who in that very meeting, they had the morning
22 session, bounced it to the NITS Panel, then the NITS Panel
23 bounced it back to them. Nobody wanted to respond whether
24 or not they would carry our word to Congress and say we
25 really need an extension on HAVA. It's not politically

1 correct to ask for it.

2 But after this election come January, we're all
3 facing that one-year deadline in the whole country and most
4 of the country is not compliant and doesn't have RFPs on the
5 street. And what about vendor depletion of resources.
6 There's only a few companies and there's 3,000 election
7 jurisdictions. So the problem is bigger than this room.

8 And we're calling it ready, fire, aim, you know,
9 it's kind of like the way it feels these days. Kind of out
10 of sequence to the way you're supposed to be. Even some of
11 my elected colleagues in San Antonio were saying they don't
12 mind if they just don't comply, because they're going to say
13 they don't think their voters want them to squander the
14 money, it's one-time money, it needs to be spent
15 appropriately on products that have been through a NITS
16 process, National Institute of Standards and Technology, and
17 they would rather take the guff because they think that the
18 public would agree, why are we spending money for something
19 that maybe won't be appropriately certified a year later,
20 why don't we just wait a year and buy something that we know
21 will be federally qualified. And they would rather take the
22 hit on the lawsuit or whatever. Not that they want to get
23 sued, obviously, but you know in LA we're always a target
24 for that.

25 We're still trying to become HAVA compliant with

1 right now another phase in our process of making Ink-a-Vote
2 last a little bit longer. But again we don't have a product
3 that's been certified to do that yet either. So I feel like
4 the tidal wave is here and we're all running, we know it's
5 going to get us, we just don't know if it's going to get us
6 before we can retire.

7 (Laughter.)

8 MS. MCCORMACK: And some of the registrars just
9 got out before the tidal wave hit them. Apparently the
10 people in this room don't have that option, myself included.

11 ACTING-CHAIRMAN KAUFMAN: Well, as always, Conny,
12 your insight is appreciated.

13 Are there any questions for Conny?

14 BOARD MEMBER BUSTAMANTE: I have a couple of
15 questions.

16 Do you have an election in the spring?

17 MS. MCCORMACK: We don't have anything planned
18 that we're responsible for conducting. Our cities, the City
19 of Los Angeles certainly has an election, a big election,
20 and 50 other cities in our county. And we support those
21 elections. It takes a lot of our staff to support those
22 with the voter database, we provide everything for them, but
23 we don't actually hire the poll workers and count the
24 ballots for which I'm eternally grateful.

25 BOARD MEMBER BUSTAMANTE: Do you have a problem

1 with Option Three?

2 MS. MCCORMACK: Well, personally for LA, because
3 we're already grandfathered in as I managed to get on the
4 record last time and is now in the staff report, personally
5 we're taken care of. But as the president of this
6 association in recognition of my colleagues' problems, I
7 think a lot of them are concerned that that isn't long
8 enough. But with the recognition that you could of course
9 meet and extend it again, and I think they would like to
10 have some assurance that if you were to pick that deadline,
11 that you would be willing, if certain counties are still
12 struggling with that, to open it back up. Because I'm not
13 looking as Mr. Kaufman mentioned for LA to benefit on the
14 backs of everybody else not getting their money. We'd be
15 very happy eventually through all these phases we're going
16 to be going through in LA to get our forty-nine point
17 whatever million. We're not looking to get more than that
18 on the backs of someone that can't meet a requirement.

19 BOARD MEMBER BUSTAMANTE: But I keep hearing from
20 counties that it's a combination of things. It's not so
21 much, I don't want to downplay it, I mean there's certainly
22 a county resources issue, but the bigger issue is really the
23 uncertainty with the Secretary of State's office.

24 MS. MCCORMACK: I think that's what created -- I
25 know it created a problem with us and I think it's created a

1 problem with other people. You know, how do we put an RFP
2 on the street when you don't know who you're going to get
3 responses from, or if you have to open it up like someone
4 mentioned to people who might be promising you a
5 certification. That's sort of happened in San Diego and
6 we'll see what happened with that, it wasn't real positive.
7 It's not an environment I would want to enter and I have
8 never entered a contract and I don't think our Board of
9 Supervisors would sign it. I would venture they would vote
10 against it. So it's not a good environment to go out with
11 an RFP, that's for sure.

12 BOARD MEMBER BUSTAMANTE: I mean but for that
13 directive, all counties essentially would have the ability
14 to meet our requirements and HAVA, right?

15 MS. MCCORMACK: That's true.

16 ACTING-CHAIRMAN KAUFMAN: Anything else?

17 BOARD MEMBER FINNEY: I don't have any questions.

18 MS. MCCORMACK: I would like to make a comment
19 about the Nevada trip. We're very hoping to work with our
20 association and the Secretary to have a trip out to Nevada,
21 their election is September 7th, the first use in the
22 country of a now federally qualified and state certified DRE
23 with a V Pack, but whether or not it's an AV Pack, I don't
24 know. There is a vendor here that maybe could address that
25 from that company.

1 But this Nevada requirement does not match the
2 California requirement in terms of a standard that's been
3 set that, as you mentioned, is not in a regulation yet, in
4 that it doesn't have to be used as a vote or a potential
5 ballot in a recount. That's not the way the Nevada system
6 is set up. And I'm very concerned that in that trip that we
7 have a opportunity to see a sample or simulation of that in
8 at least one precinct. I don't think that the exercise is
9 going to have much value without that, because otherwise
10 it's just the front end without the back end, and as soon as
11 the back end might happen in California, we'd all be sitting
12 around and saying well, how great it was in Nevada, but
13 there was no test of the back end. And I think that's
14 really an important component of it as I put in my letter to
15 the Secretary asking that we do that. So I'm hoping that
16 that becomes a part of this. But the reality is that the
17 Nevada requirements are not the same as the California ones
18 and there still will not have been a test of what would
19 happen in California under the current proposed standards.

20 BOARD MEMBER BUSTAMANTE: Let me ask you one more
21 question. I mean it's kind of ironic that the biggest
22 impediment to this process is at the Secretary of State's
23 office. As the new president of the organization, what are
24 you doing with the Secretary of State's office to try to
25 break this loggerhead or this problem with what's going on

1 in terms of --

2 MS. MCCORMACK: Well, that's what I did. I have
3 actually done quite a few things on that, I'm glad you
4 mentioned it, Mr. Bustamante. It's absolutely essential in
5 my opinion and the Secretary's and the association's that we
6 reach a positive professional working relationship. To that
7 end, three weeks ago, the Secretary and I spent a couple
8 hours together and had lunch and went over what I -- I
9 developed a list of things I thought we could work on
10 together and I said that I think what happened in our
11 relationship was that 90 percent of our relationship was on
12 an issue we're diametrically opposed. Why don't we stay
13 opposed on that and make it 10 percent of our relationship
14 and start working together on the voter for one thing.
15 We've got a November election, we have to focus on the voter
16 and educate the voter on all these new systems that are out
17 there. And he's very agreeing to that and is doing some
18 very positive things to help that happen.

19 The other part I proposed was this trip to Nevada,
20 that we do it as a team trip, in teams of two, the Secretary
21 of State and CACEO members. And I think that's the way it's
22 going to flesh out and I think it's very positive that we
23 watch that experiment and don't -- if we did it individually
24 it might be, well, I saw this, you saw that, if we can do
25 it.

1 BOARD MEMBER BUSTAMANTE: Right.

2 MS. MCCORMACK: I think it's very important that
3 we have a positive relationship and I think that we have a
4 possibility to get there. And that's my goal, and I know
5 it's the Secretary's goal.

6 BOARD MEMBER BUSTAMANTE: But my question is more
7 on the timing. I mean does this --

8 MS. MCCORMACK: The timing is a big problem.

9 BOARD MEMBER BUSTAMANTE: I mean this has been
10 dragging out here five to six months now, since February,
11 whatever that is, five months.

12 MS. MCCORMACK: I would even hope the Secretary --

13 BOARD MEMBER BUSTAMANTE: Well, actually longer,
14 since early November.

15 MS. MCCORMACK: I did notice the Oklahoma
16 Secretary of State is seeking an extension through Congress
17 and I was hoping and I will continue to hope, that the
18 Secretaries of State around the country will support this
19 potential as of next year. Again, without NIST and without
20 standards, it does seem to be an artificial deadline. But
21 even when it was set in October 2002, when HAVA was signed,
22 none of these issues were on the horizon. There weren't a
23 single one of these issues and everybody said it was an
24 ambitious deadline then. Well, now it's more than an
25 ambitious deadline.

1 And I have personally have spoken with three to
2 four HAVA people on this issue and recognize that everybody
3 has to get through November, but come January we need to be
4 looking at this as why do we want to do ready, fire, aim,
5 when what's another year to make sure the one-time money
6 that Congress has given and that this Board has and our
7 state we're fortunate to have can be spent wisely and
8 appropriately. Because buying voting systems is not an
9 every two- to three-year thing, it's usually several decades
10 goes by, and we want to make right decisions that are good
11 and are the best systems. And right now, I don't think we
12 have the environment to do that, and I think that's a
13 national issue.

14 So perhaps after November, secretaries of state
15 will agree with that and start to lobby. That would add a
16 strong lobbying force compared to a couple of us running off
17 to Washington looking like, you know, whiners, which so
18 often we do, and which I apologize if that's what I sound
19 like and I should probably sit down.

20 MR. MOTT-SMITH: I just wanted to second what
21 Conny has said about the willingness and the eagerness to
22 kind of build a very cooperative working relationship. That
23 goes without saying.

24 But I do want to explain, Mr. Bustamante, from the
25 Secretary's perspective that there is not ambiguity in the

1 situation, there's clarity in the situation. It may have
2 taken a while to arrive at the clarity, but the clarity is
3 that there will not be a secure voting system that people
4 can trust to vote on in California until there is a paper
5 trail associated with it.

6 Now, there are differences of opinion as to
7 whether that's required or not, but it is the Secretary's
8 decision to be able to make. He has made the decision, he
9 has established that that is a clear requirement. The
10 vendor community is in the process of responding to that.

11 And I guess I want to also mention that this isn't
12 confined to California, this is a discussion, as Connie
13 mentioned, that is all over the country that other states,
14 Ohio, Missouri, et cetera, are going along the same path.

15 And it is the Secretary's feeling, and this was
16 upheld in a lawsuit recently, adjudicated in his favor, the
17 issue of accessibility as important as it is, does not
18 assume ascendancy over the issue of the security and
19 reliability and public confidence of the system. So you've
20 identified us as a problem, you've identified, and by us, I
21 mean the Secretary of State, not Jana and everybody else,
22 but the Secretary of State as a problem and impediment.
23 Just to the contrary, he has established a clear direction
24 and is moving California and arguably parts of the country
25 in that direction.

1 I just wanted to put that on the record.

2 ACTING-CHAIRMAN KAUFMAN: Does staff have any
3 other comments based on what we've heard before this Board
4 deliberates on this issue that you want to add to the
5 discussion?

6 Then we're going to take just a couple minute
7 break real quick, so don't anybody go too far. We're going
8 to try and get through this. Let's just take no more than
9 five minutes and we will deliberate on this issue.

10 Thank you.

11 (Thereupon a recess was taken.)

12 ACTING-CHAIRMAN KAUFMAN: We ask everybody to take
13 your seats again.

14 Okay. We're going to reconvene here and try and
15 work through this issue.

16 And I'm going to get the ball rolling on this,
17 it's the Chair's prerogative. I'll give my thoughts and
18 then see if we can arrive at some consensus.

19 I kind of began the day by thinking I was leaning
20 towards either Option Two or Option Five. Because I do
21 feel, as much as I hear there's an overwhelming consensus in
22 the community to extend the deadline to January 1, and I
23 hear that and I understand that, I also feel like there
24 needs to be some accountability from the counties so that we
25 can feel comfortable that people are moving forward, that

1 there's not just a blanket extension of time.

2 I think this Board has tried from day one, before
3 I was on the Board, and continuing since I've been
4 appointed, to try and pull people's feet to the fire and
5 make sure people are moving forward with modernizing their
6 voting systems, and not just sitting back until the last
7 minute and waiting to do so. However, I have heard an
8 overwhelming cry from the community that it's really
9 impossible to move forward at this point and I think we have
10 to respect that. And I think that Option Five presents a
11 way for us to give people the time they need to do what they
12 need to do, but also give us some assurance that the
13 counties are moving forward.

14 I might even suggest that as Option Number Five,
15 these interim status reports that are referenced in Option
16 Five, that perhaps we might want to come up with a timeframe
17 or some kind of requirement that those status reports be
18 submitted every, whatever the date is, every six months or
19 every three months so that we can again get some sense that
20 things are moving forward or that issues need to be
21 addressed without over burdening the counties with having to
22 do formal interim status reports or they're going to take
23 their time away from trying to upgrade their voting systems
24 and put out RFPs, et cetera.

25 So I'm leaning towards Option Five because I think

1 it addresses both the concerns of the community and the
2 concerns that we as a Board would have in making sure that
3 people are moving forward and meeting their obligations or
4 at least their good government obligations to their voters
5 and their citizens.

6 And I will throw it open to the rest of my
7 colleagues to move off of that and discuss the various
8 options that are before us.

9 Mr. Bustamante.

10 BOARD MEMBER BUSTAMANTE: Well, I appreciate the
11 comments the counties made and I completely appreciate the
12 dilemma that they're in right now. Since I have been on
13 this Board, from the first day, and Steve's right that our
14 goal is to try to as quickly as possible help counties
15 receive their funding so they can switch to a new, an
16 updated voting system.

17 Given the actions that have been taken by the
18 Secretary of State, obviously the January 1 deadline is
19 impractical, but I don't know that January 1, 2006, is
20 necessarily the answer. I mean I think Option Three, the
21 July 1 deadline I think makes more sense, only because it
22 provides counties with that additional time that they need,
23 but at the same time I think it also puts the pressure on
24 the Secretary of State's staff to come through and conclude
25 its internal issues in order to satisfy the county

1 requirements.

2 I hear what the counties are saying with regard to
3 HAVA and perhaps the deadline will be changed and perhaps it
4 won't. But, you know, the issue here isn't necessarily one
5 of the counties and it isn't necessarily the Voter
6 Modernization Board. I mean I think the counties and the
7 Board can come to a conclusion on this today. But without,
8 you know, any resolution on the part of the Secretary of
9 State's office, it doesn't matter what this Board or the
10 county does, because they clearly are the principal player
11 in this and have been the principal player, to use that term
12 to where we're at today.

13 So I'm hopeful that the Secretary of State's
14 office will conclude whatever internal drills they need to
15 do in order to get things set so that they can satisfy the
16 counties ability to meet the July 1 deadline. I mean I
17 don't know that January 1 of 2006, I don't see the
18 difference between July 1 and January 1. I think all that
19 does is provide six months additional for the Secretary of
20 State's office, not necessarily the county registrars.

21 And, you know, this Board has worked very hard to
22 not be a part of anybody's problem and to date I can say
23 with a great deal of certainty that we haven't been part of
24 the problem. And I don't want to be. And I think the July
25 1 deadline I think satisfies everybody's concerns and it

1 rightfully puts a little bit of pressure on the counties,
2 not too much, but just enough to get it done if they're
3 serious about it. But I think it also puts a greater
4 pressure on the Secretary of State's office to finalize
5 their issues.

6 And as a fall back, worst case, is if for whatever
7 reason the Secretary of State's office hasn't finalized the
8 regs, maybe NITS is coming in to play and they come up with
9 some unbelievable new standard that nobody but God can meet,
10 then we always have an additional six months or longer to be
11 able to move it. I don't want to do that, but at least
12 there's an escape hatch if you will between July and
13 January. Besides which I think it would be virtually
14 impossible for any county to meet a January 1, 2006, HAVA
15 deadline if they're occurring simultaneously, July 1, 2006
16 is the VMB deadline. So I don't see how those two
17 reconcile.

18 Anyway, there you go.

19 BOARD MEMBER FINNEY: Okay. I have been going
20 back and forth between Option Three and Option Five,
21 actually. And I think the greatest concern I would have
22 relates to the ability of the registrars to comply with HAVA
23 by January 2006, if that deadline doesn't move. And I think
24 that the registrar from Los Angeles kind of touched upon the
25 point briefly in her remarks that it's controversial to

1 extend the HAVA deadline. I think for the folks in
2 Washington it will happen in the year 2000. So I think
3 there is a chance that it's not going to get extended. And
4 if that's the case, I think it helps to have a July deadline
5 as well, because it gives you time as a registrar to kind of
6 move forward with at least one major requirement out of the
7 way as you approach the HAVA deadline of January 2006.

8 Additionally, I think that Americans have always
9 kind of established themselves in the world as
10 technologically genius. I mean look at the Silicon Valley
11 and all the many decades of innovation that have come out of
12 this country. I think that if we set a July deadline,
13 there's also kind of a, how shall I say it, a blowing of the
14 trumpet to the vendor community to step up to the plate and
15 deliver sooner.

16 I have deep concern about the way the vendor
17 community is currently acting in the current climate, and
18 even so far as having seen an actual videotape of
19 inappropriate statements by a certain CEO of a certain
20 vendor that we're talking about here leading into a
21 presidential election, when just a few years ago we had
22 perhaps the most, actually, the most confrontational and
23 questionable presidential election in the history of the
24 country where it was the Supreme Court that made the
25 decision, not the people, in my opinion. And I do think

1 that we do need to push the vendor community to step up to
2 the plate and deliver something that truly takes any
3 question of equity out of the market.

4 And so I am leaning towards Option Three, having
5 kind of thought through and heard both of my Board members'
6 comments. I really do sympathize with the situation the
7 counties are in. I do believe that you're somewhat
8 victimized by this process. But as my fellow Board members
9 stated, as we approach that deadline and as our monthly
10 meetings continue, if it looks like things might change in
11 Washington or if it looks like the vendor community isn't
12 coming up with anything new, if it looks like the Secretary
13 of State's office is still wrestling with the issue of
14 certification, we can revisit this.

15 But I do think that it kind of creates incentive
16 to keep the ball rolling, and quite frankly, we as a Board
17 have a duty to the people of California pursuant to the
18 initiative that created the Board and the appointments that
19 we currently sit in on behalf of the Governor's office and
20 the Secretary of State's office. So I do feel some pressure
21 to kind of keep the ball moving forward.

22 So having said all that, I'm going to turn it back
23 to my fellow Board members.

24 BOARD MEMBER BUSTAMANTE: Right now the counties
25 have the ability to meet most of the requirements. I mean

1 they have the ability to update the system, they just don't
2 have that final ability to actually meet the HAVA
3 requirement by having the DRE in place.

4 MS. LEAN: And the state requirement too.

5 BOARD MEMBER BUSTAMANTE: Right. So
6 theoretically, at least with some of the funding that's
7 available through HAVA, they can go through 90 percent of
8 what needs to happen. There isn't any reason to delay with
9 that other than just a choice of whether or not you get it
10 all at once or kind of get it in steps, right?

11 MS. LEAN: Can you give me a precise question,
12 what are you asking?

13 BOARD MEMBER BUSTAMANTE: Well, I mean like, for
14 instance, right now you can get an optical scan system and
15 then purchase a DRE system later. I mean that would meet
16 the requirement in each of the precincts?

17 MS. LEAN: Okay. So you're talking about the HAVA
18 requirements or the VMB Project Documentation requirements?

19 BOARD MEMBER BUSTAMANTE: Actually both.

20 MR. MOTT-SMITH: The impediment is to a county
21 that wants to go directly to a DRE system.

22 BOARD MEMBER BUSTAMANTE: Right, right. So the
23 impediment is really to just do everything in one shot. I
24 mean from a VMB perspective, the application can go forward
25 where, you know, the application could essentially be an

1 optical scan system with a later date, you know, kind of
2 leave a percentage of it off, that only asks for say 85
3 percent of their funding because they intend to be able to
4 add a touchscreen system as soon as the certification
5 process is concluded?

6 MS. LEAN: Yes.

7 BOARD MEMBER BUSTAMANTE: So that part of an
8 effort is available to them right now?

9 MS. LEAN: Correct.

10 ACTING-CHAIRMAN KAUFMAN: One of my concerns about
11 that, however, is by putting a July deadline on, while it
12 does put perhaps some pressure on the vending companies, it
13 might force some counties who might want to do a direct
14 transition to a DRE system to have to spend money on an
15 interim system which increases their costs in the long run
16 and might mean that they are not going to get as much
17 benefit from funding in the long run if they are forced to
18 go to an interim system and then a final system simply
19 because of a deadline for submission of project
20 documentation to get the funding out of this Board, whereas
21 they might not otherwise go through that process. And what
22 might be appropriate for LA County, given its size and its
23 ability to move directly towards a new system countywide,
24 may not be the case with some of the smaller counties who
25 are looking to go directly to there, and I'd hate to create

1 an artificial situation where they have to go through that
2 two-step process and ultimately increase their costs in the
3 long run.

4 BOARD MEMBER BUSTAMANTE: No, I wasn't suggesting
5 that they use an optical scan as an interim system. I mean
6 I'm suggesting that that can be the system that they use,
7 and they have that option today. I mean there's just the
8 final step in terms of meeting the minimum requirements in
9 terms of having a DRE in a precinct, which can essentially
10 be accomplished with -- I mean depending on the size of the
11 county, I mean obviously LA County is a thousand or two
12 thousand or whatever the number is, where the smaller
13 counties it's two or five or twelve.

14 ACTING-CHAIRMAN KAUFMAN: Yes. But I don't think
15 our goal should be encouraging counties to meet minimum
16 requirements, I think our goals should be encouraging
17 counties to adopt the best system for the voters.

18 BOARD MEMBER BUSTAMANTE: Oh, I agree. Right.
19 And I mean what I'm suggesting is accomplishing that. But
20 rather than using an outdated punch card system, well, you
21 can't use it anymore, or filling it in with a pencil like we
22 do here in Sacramento County, that ability of a new system,
23 an optical system, for instance, is meeting the intent of
24 this Board, it's meeting the intent of HAVA, it's meeting
25 the intent of the Secretary of State's office in terms of

1 modernizing the voting equipment. And that's not a minimum
2 standard at all, in fact, most counties have opted for
3 optical scan systems, as opposed to a DRE, and I think they
4 look at it as the state of the art.

5 So that's not a minimum requirement, I'm talking
6 about minimum simply in terms of the touchscreen part which
7 isn't available to any of the counties right now. I'm
8 suggesting that maybe the counties today have the option to
9 at least meet what they can meet, and then obviously they
10 have to hold off. Because the central question here is
11 really about touchscreen voting, and the Voting
12 Modernization Board doesn't have a position in terms of
13 optical scan or touchscreen voting.

14 I happen to be a big fan of touchscreen voting,
15 but not withstanding that, it's not our call, the counties
16 can do what they choose. But all I'm simply saying is there
17 are options available to the counties today, not a hundred
18 percent, but it will get them most of the way in terms of
19 modernizing the voting equipment without meeting that final
20 requirement of the Secretary of State, of the state.

21 ACTING-CHAIRMAN KAUFMAN: I agree with what you're
22 saying in terms of it's not this Board's decision as to what
23 might be best for the counties, but I think by putting this
24 time limitation on it and effectively forcing some of the
25 counties' hands into having to purchase optical scan systems

1 when they may otherwise want to purchase DRE systems, you
2 are essentially making the decision for them that they have
3 to go this route even if they decide that for their county
4 and their needs the DRE system may be best.

5 BOARD MEMBER BUSTAMANTE: Well, I mean, it's up to
6 really the Secretary of State's office to certify the
7 equipment and the vending community to have that equipment
8 available. I mean we're not making anybody do anything.

9 BOARD MEMBER FINNEY: I was leaning towards Five
10 initially, in fact for quite a while, and then I kind of
11 went to Three and then I kind of went back to Five. And the
12 reason I've kind of settled more into the July deadline is
13 because I tend to agree from a legal perspective with what
14 Member Bustamante has said about what our responsibility is,
15 and I also believe from a practical perspective that if you
16 keep a little heat on, it keeps the ball moving forward.

17 But then I think the counties, the ball is in
18 their court as far as exercising prudence as we move into a
19 new technology on the heels of once again the most
20 controversial election in American history, which has had
21 very real effects. I mean our country has been in a major
22 state of war now for some time and we don't feel the effects
23 yet over here except for what happened on 9/11, but who's to
24 say, you know, what things would have been like otherwise,
25 which is always the big question when it comes to elections.

1 I think that the registrars have a very, very
2 important responsibility to the voters more than anybody
3 else, in my opinion, because they secure that voter's
4 opportunity to cast a true vote, and for that true vote to
5 be cast and counted towards an election.

6 And I believe that we need to exercise prudence as
7 a Board and I encourage the counties to exercise prudence in
8 how they approach this, because if there does end up being a
9 problem with the DRE system, if they can be manipulated in
10 the way that the accusations are kind of going around out
11 there, then we're really in a situation.

12 And so I normally would want to leap ahead in
13 technology. When I worked at the Governor's office, I had
14 to work on the Technology Advisory Group and always pushing
15 the envelope on education technology, all these
16 technological areas, life sciences, all these things. But
17 my point is in voting, I think we need to be very prudent
18 and very conservative. And so that's now kind of why I'm
19 moving in this direction. And I do believe that if the
20 vendor community steps up to the plate and produces machines
21 that can be worthy of a certification from the Secretary of
22 State's office, then we might still meet that deadline.

23 And once again, Steve, I just want to say for the
24 record, I'm very open to revisiting the issue, if we need
25 to. I just kind of think if we just keep extending it out,

1 I don't know, it's very easy to get distracted with other
2 things. I've been there. I mean I've sat on what, 27 state
3 Boards and Commissions now.

4 You know, I think it helps to keep the ball moving
5 forward and it gives us a chance to exercise prudence with
6 respect to what does exist out there and allows us to
7 fulfill our obligations as a Board to the people of
8 California pursuant to -- indirectly on an initiative, I
9 mean of a legislative bill.

10 And then at the same time, we do have the power to
11 revisit the issue if we have to. So I didn't want you to
12 think I was all of a sudden flip flopping. Just as I really
13 thought it through in general, I felt pretty strongly about
14 trying to create a deadline that keeps the ball moving
15 forward.

16 ACTING-CHAIRMAN KAUFMAN: Well, it sounds to me
17 like we have two votes for Option Three up here, and I think
18 we all have the same interests in seeing that the counties
19 are not hurt by what's been going on at the state level with
20 respect to certification at the federal level and I think we
21 need to have a consensus so that the counties do have
22 additional time. It sounds to me like there is certainly a
23 willingness up here to revisit the issue down the road. So
24 I certainly don't want to create any roadblocks here to us
25 granting the counties an extension of time and think that

1 this Commission should speak with a united voice. So if
2 there is a motion to adopt some form of extension, I think
3 we should do that.

4 BOARD MEMBER BUSTAMANTE: I move that the Board
5 adopt Option Three, that the Voting Modernization Board move
6 the deadline to July 1, 2005, also to note that this Board
7 is open to revisiting the issue as we approach the July 1
8 deadline, subject to certification issues. Well that won't
9 happen until October.

10 ACTING-CHAIRMAN KAUFMAN: I think you just take
11 the first sentence of Option Number --

12 BOARD MEMBER FINNEY: Or we could just leave it
13 generic and say that the Board reserves the right to revisit
14 the issue prior to the deadline. We can do it that way.

15 ACTING-CHAIRMAN KAUFMAN: Yes, that's better.

16 BOARD MEMBER FINNEY: Okay.

17 ACTING-CHAIRMAN KAUFMAN: Do you want to read back
18 that motion?

19 MS. PARSONS: Yes. It's a motion for the VMB to
20 move the deadline from January 1st of 2005 to July 1st,
21 2005, for the Project Documentation Packages and that the
22 Board is open --

23 ACTING-CHAIRMAN KAUFMAN: The Board reserves the
24 right to revisit this deadline prior to the --

25 BOARD MEMBER BUSTAMANTE: The July 1 deadline.

1 MS. PARSONS: Okay. We'll take a vote.

2 Stephen Kaufman.

3 BOARD MEMBER BUSTAMANTE: Is there a second?

4 BOARD MEMBER FINNEY: I'll second that.

5 MS. PARSONS: Sorry.

6 Stephen Kaufman.

7 ACTING-CHAIRMAN KAUFMAN: Aye.

8 MS. PARSONS: Michael Bustamante?

9 BOARD MEMBER BUSTAMANTE: Aye.

10 MS. PARSONS: Tal Finney.

11 BOARD MEMBER FINNEY: Aye.

12 MS. PARSONS: This motion passes.

13 ACTING-CHAIRMAN KAUFMAN: Okay, counties you have

14 some additional time.

15 BOARD MEMBER FINNEY: Congratulations. We'll

16 revisit it if we need to. Don't worry, we won't leave you

17 out there.

18 ACTING-CHAIRMAN KAUFMAN: We're not intending to

19 leave the counties high and dry.

20 BOARD MEMBER FINNEY: It gives you something to

21 focus on after the November elections.

22 ACTING-CHAIRMAN KAUFMAN: We hope that the message

23 will be received by all interested parties out there.

24 BOARD MEMBER FINNEY: Thank you for coming and

25 speaking. For the first time we have a court reporter, so

1 your words are permanently inscribed on the record. I think
2 that we have a nice record established.

3 ACTING-CHAIRMAN KAUFMAN: We very much appreciate
4 the written and oral comments.

5 We have one remaining issue which was Matter 5A,
6 and I think what I've heard up here and what we would like
7 to do perhaps is have the staff come back and we can have
8 the staff present us with a proposed policy regarding the
9 check distribution system that incorporates the concerns of
10 the Chair. I know you don't want to be drafting more stuff,
11 but I think we're headed in that direction.

12 BOARD MEMBER FINNEY: So both with respect to
13 notice and inclusion, the Chair representing the Board as a
14 whole, in the disbursement in process.

15 MS. LEAN: I will be in conversation with the
16 Chair to make sure I get his input.

17 BOARD MEMBER FINNEY: Consistent with the
18 provisions of Proposition 41.

19 ACTING-CHAIRMAN KAUFMAN: Thank you. Okay, with
20 that I think we are --

21 BOARD MEMBER FINNEY: I make a motion to adjourn.

22 BOARD MEMBER BUSTAMANTE: I second.

23 ACTING-CHAIRMAN KAUFMAN: August 19th is the next
24 meeting here at 10:00 a.m. Thank you everybody.

25 (Thereupon the VMB meeting was adjourned at 12:22 p.m.)

1 CERTIFICATE OF SHORTHAND REPORTER

2 I, MICHAEL J. MAC IVER, a Shorthand Reporter, do
3 hereby certify that I am a disinterested person herein; that
4 I reported the foregoing Voting Modernization Board
5 proceedings in shorthand writing; that I thereafter caused
6 my shorthand writing to be transcribed into typewriting.

7 I further certify that I am not of counsel or
8 attorney for any of the parties to said Voting Modernization
9 Board proceedings, or in any way interested in the outcome
10 of said Voting Modernization Board proceedings.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 6th day of August 2004.

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18 Michael J. Mac Iver

19 Shorthand Reporter
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