

Committee Meeting

of

ASSEMBLY FEDERAL RELATIONS COMMITTEE

"Testimony concerning the implementation of the Federal mandates imposed by the 'Help America Vote Act of 2002' and its impact on the administration of elections in New Jersey"

LOCATION: Committee Room 9
State House Annex
Trenton, New Jersey

DATE: February 9, 2004
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Reed Gusciora, Chair
Assemblywoman Linda R. Greenstein, Vice Chair
Assemblyman William D. Payne
Assemblywoman Mary T. Previte
Assemblyman Guy R. Gregg
Assemblyman Joseph Pennacchio



ALSO PRESENT:

Catherine Z. Brennan
Linda Earley Chastang
Office of Legislative Services
Committee Aides

Beth Schroeder
Assembly Majority
Committee Aide

Mark Duffy
Assembly Republican
Committee Aide

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ASSEMBLYMAN REED GUSCIORA (Chair): We can begin.

Roll call.

MS. EARLEY CHASTANG (Committee Aide): Mr. Gusciora.

ASSEMBLYMAN GUSCIORA: Present.

MS. EARLEY CHASTANG: Ms. Greenstein. (no response)

Mr. Payne.

ASSEMBLYMAN PAYNE: Here.

MS. EARLEY CHASTANG: Ms. Previte.

ASSEMBLYWOMAN PREVITE: Here.

MS. EARLEY CHASTANG: Mr. Wisniewski. (no response)

MS. EARLEY CHASTANG: Mr. Gregg.

ASSEMBLYMAN GREGG: Here.

MS. EARLEY CHASTANG: Mr. Pennacchio.

ASSEMBLYMAN PENNACCHIO: Here.

ASSEMBLYMAN GUSCIORA: I just want to welcome everyone for the initial meeting of the Federal Relations Committee. It's often been said that New Jersey pays, collectively, the most taxes and gets the least in return. And it's hoped that, with this Committee process, that we can optimize our communications with the Federal delegation and the Federal Government, and make sure that New Jersey does get the biggest bang out of the buck from the Feds. A few years ago, many locals cried that the State was often making mandates without paying for them. And we're seeing more and more Federal mandates without providing us with the appropriate dollars to implement them.

Today's hearing is on the Help America Vote Act, which have new voting requirements. It's estimated that New Jersey -- it will take \$87 million

to implement the HAVA recommendations of the new mandates. The Federal Government has only given us 23 million so far. Hopefully, more is on the way. But there may be some problems with HAVA, in that-- It's hoped through testimony or otherwise, that we could make sure that we implement this so that we have a safe and free election in November and fulfill the requirements of HAVA.

With that, I'd like to open it up with statements from the rest of our members, if you'd like to discuss anything.

Mr. Payne.

ASSEMBLYMAN PAYNE: Thank you, Mr. Chairman.

I'm delighted to be a member of this Committee. I do have a particular interest in our Federal Government and our representatives there. I want to say this is really a wonderful opportunity for the State of New Jersey to be able to have a closer relationship with those who represent us in Washington.

One of the exciting things about this is that it's my hope that we will be able to open up closer dialogue between our Federal legislators and those of us on the State level, because many times the kinds of legislation that we are able to pass here in this State is landmark legislation, which -- it's my hope that we might be able to influence legislation across the country.

A couple examples of that, of course, would be the racial profiling legislation -- which we in New Jersey were the first in the nation, I believe, to pass legislation that criminalizes racial profiling. And being able to have a dialogue with our representatives, might very well be able to have that kind of legislation that will be beneficial to other citizens around the country. Another piece of legislation which I think is very, very helpful is an Amistad legislation,

which was passed by our Legislature also -- which again is landmark legislation -- which, of course, calls for the teaching of contributions of African-Americans to all of our youngsters, not just in African-American schools and not just in February, but throughout the year. And I think that it's certainly appropriate -- this being African-American history month -- that that's certainly one of the things that we probably will be able to have an impact, a positive impact, upon the nation through our deliberations here and through deliberations with our Federal representatives.

I want to thank you very much for the opportunity.

ASSEMBLYMAN GUSCIORA: Thank you.

Ms. Previte.

ASSEMBLYWOMAN PREVITE: I particularly welcome an opportunity to have a dialogue on the issues of No Child Left Behind, which is proving to be an absolute disaster in many of our districts. I strongly support accountability and being able to measure progress with our children. But I think this piece of Federal legislation that's been passed down to us is certainly creating havoc in a lot of our districts. And that will certainly be one of the areas, since I certainly label myself as a child advocate in the Assembly -- but strongly seeking dialogue on those issues, and having an opportunity to hear from some of our school officials about the realities of what they're facing in our school districts with trying to implement this piece of legislation. So that will be one area that I'm very interested in getting a dialogue going.

ASSEMBLYMAN GUSCIORA: Thank you.

I do want to welcome our friends from the right. I'm particularly glad that Assemblymen Gregg and Pennacchio have joined us. I had the pleasure of serving with Guy Gregg, on his committee, when I was in the

minority, and we had many good discussions. But I think they were always productive and fair and balanced. So I'd like to welcome them -- and if they have anything to add -- and then we'll get back to our Vice Chair, who -- I'm sure you're collecting your thoughts right now.

Mr. Pennacchio.

ASSEMBLYMAN PENNACCHIO: Thank you, Mr. Chair.

I, too, want to express, first of all, how grateful I am that I am sitting on this Committee. And with you as the Chair, I have no doubt you're going to be very fair and balanced, even though you've already said we sit to your right. I don't know if that was a Freudian slip or if that was intentional. (laughter) I do thank you.

I don't think there is any doubt on this Committee that we all trust and believe, with all our heart and all our fervor, on the ability for every citizen to cast their vote and make it count. I just want to preface that by saying: cast their vote and make it count once. I have a very strong belief that we should be -- that not only should we be encouraging people to vote, but we should also be trying to root out any type of fraud that may be occurring. Some of the testimony, quite frankly, that we may be hearing today may actually be doing the opposite. So that's why I am glad that I am sitting on this Committee and listening to that vote and listening to that testimony.

We had an opportunity last year and, unfortunately, it was passed by for whatever reasons. There was an Internet Commission that was being promulgated, and it's there. We had offered a floor amendment that would also -- instead of just studying the ability to vote through the Internet, to also study the ability to root out any fraud that may happen. And for the life of me, I could not understand -- I guess it was a baptism into politics -- why it would be

voted down strictly on party lines. Why would we not want to take a look -- while we're forming a commission to study how we expand peoples' right to vote -- also, take a look and see whether or not we could also find any reason-- Maybe that we can get rid of the ability of people to cast a fraudulent vote, which, in my view, is just as important. And unfortunately, on party lines, that was voted down.

Brendan Byrne often says that when he dies, he wants to be buried in Hudson County. That way, he continues his life in politics. It's funny, because there's a ring of truth to it. Everybody's heard the stories of how on election day we go down to the cemetery, pick up all the names on the tombstones, and make sure that they're able to cast -- their right to vote too. And that's something that I think this Committee has to look strong at and make sure it doesn't happen.

And finally, we're going to be looking at HAVA-I and HAVA-McGreevey today, and at least let's not be reminded that when HAVA-I was passed, it was passed with strong bipartisan support. Both sides of the aisle wanted this bill. There was a lot of study that went into this bill, in formulation of that bill, on both sides of the aisle. Quite frankly, at the time that it was passed, it was a good bill. I still think it's a good bill. My concerns are that the Governor's conditional veto doesn't make it a good bill any more.

Thank you.

ASSEMBLYMAN GUSCIORA: Thank you.

Mr. Gregg.

ASSEMBLYMAN GREGG: Thank you, Mr. Chairman, and thank you for those kind, welcoming remarks. It was a good Committee, and I look forward to working with you on this one. I look forward to the issues that

we've heard from the other side of the aisle. Having a committee committed to deal with the interrelations of the Federal and State government, I think, is a good thought. We are the richest state in the country. I think dealing with some of the issues that reflect tax policy across the country and how it reflects New Jersey will be an interesting awakening for some of our citizens, not realizing how they actually benefit when some tax policy may not be so good for Arkansas and Missouri. So I'll be interested to hear some of our Federal legislators as they come forward. And I hope they all do or many do. I certainly assume they'll be invited and that they come here and talk about how New Jersey fairs with the rest of the country, and give us some views as that goes.

I do have a question, Mr. Chairman, as we begin. It's a new Committee, and the issue on the table today is an issue that historically would, perhaps, be referenced to the State Government Committee. I happen to think that these types of issues that are Federal mandates, and ultimately have to be executed by the State, probably needed its own committee. The question is, can I assume, or our members assume, that types of legislation that clearly will be -- require legislation on the State level will come to this Committee now, as opposed to being referenced to the State Government Committee?

ASSEMBLYMAN GUSCIORA: Well, I think-- That is a good question. I think it harps back to the Regulatory Affairs, when we were on that, that we were always battling with leadership to make sure that we got our fair share of substantive bills. So I certainly will press that case with leadership here on this side, just as you did with yours. We want to be a substantive Committee and not just an informational. If it's possible that we can have that

legislation, I think that we have some of the best minds in the Legislature, and I think that we can adequately deal with the issues.

ASSEMBLYMAN GREGG: I trust they will take your good judgment into their opinion, and I thank you.

ASSEMBLYMAN GUSCIORA: Thank you.

Vice Chair, Linda Greenstein.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much, Mr. Chairman.

I am truly excited about this Committee. It's so easy, being in a state legislature, to begin to feel a bit insular, to feel divorced from all the other issues that are going on around the country. You read about them in the paper. You realize that there's a tremendous nexus with everything we're doing. And many times constituents will ask us about issues, and we have to say, "That's Federal. This is State." This really gives us an opportunity, which I'm very grateful for, to interface with people like Congressman Rush Holt, who I see over there -- glad to have you here today -- and to deal with these issues ourselves, and to find what our role is in trying to get the best for New Jersey.

Many of the issues have been mentioned here already. I've also heard a lot, as Assemblywoman Previte has, about the No Child Left Behind. I've been doing a lot of meeting with our school officials recently, and everyone is talking about the problems of that. So we'll have a chance to address that. When I mentioned I was on this Committee, recently -- I was talking to some health officials and all of them said to me, "Oh, please, sit down with us. We have so many Federal issues that you can deal with on the State level." And, of course, being a member of the Budget Committee, we've seen so many ways in which we've had problems in terms of getting our fair share of Federal funds.

A couple members of the Budget Committee, in fact, last year, went down to Washington to press the case with our Federal officials and to do the best they can to get whatever we can for New Jersey.

So these are all areas in which I think we will be able to work on this Committee, to put forth our best case for New Jersey, and I look forward to working with all of you.

ASSEMBLYMAN GUSCIORA: Thank you.

Just one other housekeeping, before we begin -- is that if anyone wishes to testify, have they filled out a white slip, and if they could hand that in to our Committee aides. Then we'll make sure we get you on the roster to testify. And also, in follow-up to Assemblyman Gregg's point about inviting our Federal officials, I have written to each of our Congressional delegation. I've invited them to put any input that they have, and I still think it's important that we maintain a good, open dialogue with our Congressional delegation, so that we can make sure that we get the biggest bang for our buck.

With that, I'm excited that the first Congressional representative to testify is my Congressman, Congressman Holt. And I'm particularly proud that he is my Congressman -- as a rocket scientist that he is what truly a Congressman should be; that he's very receptive, open, and maintains a good dialogue with his local representatives, as well as his constituents.

Rush is the one who brought this topic to my attention -- the Help America Vote Act -- and that we have to make sure that, yes, we do maintain a credible election system, so that we don't have the pitfalls that were repeated in the 2000 election -- that from now on, that we maintain the integrity of the electoral process.

With that, I'd like to invite Congressman Holt up, who will testify on HAVA.

Thank you.

C O N G R E S S M A N R U S H H O L T: Chairman Gusciora, and respected Committee members, it's certainly my pleasure to be here. I'm very pleased to join you in what I understand is your inaugural voyage with this Committee.

My name is Rush Holt. I represent the 12th Congressional District of New Jersey, parts of five counties across central New Jersey. And I thank you very much for inviting me here to talk about what I think is a very important topic -- where Federal and state jurisdictions come together. I'd like to talk about the Help America Vote Act, and the need for every voting procedure, mechanism, and machine to produce a voter-verified paper trail -- the need for every voter to have a verification of his or her vote.

Now, before I begin, I'd like to say a word about how appropriate it is that the Federal Relations Committee, so early in its existence, is addressing this issue. Voting is really the central act of our democracy. And like few other issues, it's given special treatment in the Constitution, in Article I, where both the State and Federal Governments have overlapping jurisdiction over the administration of elections. And a high degree of cooperation is needed for well-run elections.

As you all know, after the November 2000 election, Congress was flooded with demands for election reform. In response to those demands, Congress passed the Help America Vote Act of 2002. HAVA, as it's known, was groundbreaking election reform legislation, and it is currently helping states improve the administration of elections and helping states replace obsolete or

inadequate voting equipment. I was pleased to support HAVA, but signs of trouble began to appear almost immediately.

News accounts have described a number of irregularities. And I'd like to stress that these are reports of errors with electronic voting machines. And one of the real problems, and one of the reasons for what I'm talking about today, is that these reports are almost impossible to verify. It is because the voting is unverified. A recount with an electronic voting machine, for example, is meaningless. Whatever the machine says at five minutes after the polls close is what it will say a week later. And if that count is erroneous, because of some glitch between the casting of the vote and the recording of the vote, no one will ever know. So these news accounts are troubling.

In November 2002, brand new computer voting systems in Florida are purported to have lost more than 100,000 votes due to a software error. In Maryland, voters attempting to vote for one candidate saw an *X* appear next to the name of the candidate the voter had not chosen. In Virginia, though they were using equipment from still a different manufacturer, voters experienced a similar problem. *The Washington Post* reported that nearly 1 percent of all votes cast may have been assigned to the wrong candidate. Now, one of the questions is, how can they know?

In 2003, we saw no improvement -- in fact, more troubling signs. In Boone County, Indiana, 144,000 votes were reported to be counted in a jurisdiction with fewer than 19,000 voters. Several months ago in Hinds County, Mississippi, almost immediately after the polls opened, the county's brand new touch screen voting machines began to fail, and a new election was called. Most recently, you may have read in the papers, that in a special election in Broward County, Florida -- Florida, I note, Florida seems to be

visited with election problems with some regularity -- in Broward County, Florida, at least 134 people were recorded as showing up to vote whose votes were not recorded, even though there was only one item on the ballot that day. And it does certainly raise questions why someone would show up and sign in to vote on a single issue matter, and then not cast a vote. We can't say for sure that the electronic machines malfunctioned, but it certainly raises that question. And those voters will, perhaps, think twice about ever going to vote again, if they have their confidence in the process so badly shaken.

So errors and irregularities in the use of brand new and expensive, direct recording, touch screen kinds of machines are really not a matter of hypothesis. There are too many instances now that have shaken the confidence of voters. And a growing chorus of concern from computer experts around the country have raised question about the integrity of these machines.

In response, nearly a year ago last May, I introduced the Voter Confidence and Increased Accessibility Act. The bill would require all voting systems to produce an actual paper record, that voters can check at the time of their vote, to ensure the accuracy of their votes before any electronic recording is finalized. That paper record is then stored at the polling place, perhaps inside the machine, and it can be used by election officials to verify votes in the event of a computer malfunction or any other irregularity.

Hundreds of prominent computer experts -- including Rebecca Mercuri from Lawrence (*sic*), New Jersey, David Dill from Stanford University -- consider a voter-verified paper trail to be a critical safeguard for the accuracy and integrity and security of computer-assisted elections. And without it, faulty or even hacked computer systems will spit out a faulty or hacked result, no matter how many times you call for a recount.

In addition to requiring all voting systems to provide a voter-verified paper record, which would be the vote of record for use in manual audits and recounts, my legislation does several things. It would ban the use of undisclosed software and wireless communication devices in voting systems. It would require all voting systems to meet these requirements in time for the general election of November 2004. Jurisdictions who feel that their new computer systems would not be ready by that time could use an existing paper system as an interim measure, at Federal expense by the way. The bill would also require mandatory surprise recounts in one-half of 1 percent of all jurisdictions.

It is not necessary to hinder accessibility in implementing my legislation. You may have heard that some advocates for the disabled have expressed concern that voter-verified paper trails would hinder accessibility. However, it's possible to have both verifiability and accessibility. My legislation, the Voter Confidence and Increased Accessibility Act, does not require disabled voters to use paper, and it includes a number of improvements to HAVA that I believe would benefit voters with disabilities. It moved HAVA's deadline for disability access forward by one year from January 2007 to January 2006. It also requires that voting machines used by disabled voters provide a mechanism for voter verification, and that mechanism need not be paper.

Jurisdictions unable to meet this requirement by November 2004 with electronic equipment must give disabled voters the option to use either the interim paper system with the assistance of an aid, or whatever accessible system is available. In other words, the voter with disabilities, perhaps a visually impaired voter, would be able to use the existing system -- the historically available voting system -- or the new electronic machines, even if those new

electronic machines don't have the voter verification capability. That would be just for this year's, November's, election.

The legislation would also require that election officials be instructed in the rights of the disabled to vote with the assistance of an aid of their own selection, rather than an imposed poll worker.

More than 40 disability advocacy, civil rights, and public interest groups have endorsed the statement that reads, "New voting machines should provide a voter-verified paper audit trail and incorporate data-to-voice technology to ensure full access by all." Some of these groups include the American Council for the Blind of New York, the Center for Independence of the Disabled in New York, the Disabilities Network of New York City, the New York State Young Democrats Disability Issues Caucus, and a number of others.

A voter-verified paper trail achieves, I believe, the appropriate balance between accuracy, integrity, security, accessibility, and confidentiality. Voter-verified paper trails ensure that voting is an act of record, not an act of faith. A number of people have talked to me about their use of electronic machines, and many of them are troubled. As they leave the polling place, the voters will scratch their head wondering how can they ever know that their vote was recorded the way they intended it to be.

Some election officials have said to me, "Well, we have been using these electronic machines for several years without a problem." To which I would say, how do you know? That's the point. Without an independent voter-verified paper trail, one cannot know.

Well over 100 other members of Congress from both parties have co-sponsored my legislation, because they feel the same way. A number of organizations have endorsed it -- ranging from Move On, to the New Jersey

Conservative Party, to the Libertarian Political Action Alliance, to Verified Voting Organization. So it has a broad range of support. It need not, should not be partisan. This cuts both ways. Every voter wants to know that his or her vote counts, and every candidate would like to know that the voting is as the voters intended.

Many states have already taken action to mandate voter-verified paper trails. In August of last year, Illinois passed a law requiring what they call contemporaneous printing of paper ballots. In November, the Secretary of State of California mandated voter-verified paper trails by 2006. In December, Washington State Secretary of State, Sam Reed, announced that he would introduce legislation requiring electronic machines to produce a voter paper trail for each vote cast. That same month, Nevada's Secretary of State mandated voter-verified paper trails by this year. Legislation to require voter-verified paper trails is currently pending in legislatures in New York, Maine, Ohio, and Maryland -- at least those, to my knowledge.

So this is something that affects all voters in New Jersey. It is, I think, appropriate for your consideration here in this Committee. I thank you for inviting me to address you today about the Voter Confidence and Increased Accessibility Act. And as you engage in the important work of implementing the Help America Vote Act throughout the State of New Jersey, I urge you in the Assembly to ensure that the November 2004 election is a voter-verified election. And you can do this, I would suggest, by enacting legislation similar to the Voter Confidence and Increased Accessibility Act.

Thank you very much, Mr. Chairman and Committee.

ASSEMBLYMAN GUSCIORA: Thank you very much, Congressman. I just saw some note that-- Actually, last Friday on the Chamber

trip I picked up *The Washington Post*, and in the Metro Section there was an article about the Maryland legislature -- actually hired a computer hacker to hack their system, and they successfully did that. So there is a potential that, without independent verification, voting procedure could be suspect to the electronic method.

The one question that I had, getting down to the nuts and bolts of HAVA, is that it's been estimated that New Jersey needs \$87 million to implement the HAVA recommendations. The Feds have given us \$23 million so far. But what I found was distressing was that the 800 million that should be budgeted by the Federal Government, the President has only put in a request for 50 million this year. And I was wondering what are the feelings down on Capitol Hill to fully fund the HAVA reforms that are necessary for this year?

CONGRESSMAN HOLT: Well, I think an appropriate role for this Committee is to make sure that your congressional representatives understand when Federal funding falls short in areas where that Federal funding is appropriate -- what often goes by the name of an unfunded mandate. It's my understanding that New Jersey has received \$16 million so far, under HAVA, with another 23 million slated for delivery, and I believe that is in the pipeline now. The cost I've heard has been estimated or calculated for New Jersey to run \$80 million. So the Federal funding that has been provided and is, I understand, about to be provided, falls significantly short of that. And I think the same can be said in most states around the country. I have been working with my colleagues to see that the Federal share of this expense be fully born and that amount be increased. I think most members of Congress recognize that the steps required under HAVA have not been fully funded.

ASSEMBLYMAN GUSCIORA: The other concern that I have is the new requirement that the last four digits of the Social Security number be submitted, and also that, on the first time that a new registrant would vote, they have to provide a bank statement or a utility bill. I find that somewhat of a chilling effect on someone, especially during these times of identity theft, giving any part of a Social Security number, or also quite onerous to provide a bank statement or some other form of ID. And I know the Assemblyman's concern about voter fraud -- I just don't know how you do the balance of the two. But particularly, I am concerned with the Social Security number requirement.

CONGRESSMAN HOLT: The Help America Vote Act was a hard-won compromise. There were some portions of that that were very clearly tradeoffs -- in the Social Security number matter. It was a tradeoff between those who wanted a firm personal identification and those who felt that it would -- well, that the Social Security numbers should not be used for identification purposes other than for payment of Social Security taxes and receipt of Social Security benefits. There are, I think, many discussions yet to come in Congress about same-day registration and whether felons, or former felons, should have the same franchise as others -- any number of issues to come up, some of which fall along partisan lines and some don't.

I think those of us who supported HAVA felt it was the best compromise we could get under the circumstances, recognizing that the country was clamoring for quick electoral reform on the heels of the 2000 elections. I look forward to revisiting several parts of HAVA. But for now, it is the law of the land, and it's done more for access and integrity of voting than anything else in the last 30 years.

ASSEMBLYMAN GUSCIORA: My final question before I open it up: New Jersey -- 14 of our counties have the electronic voting booths and seven are still lever, and they're slated to convert into electronic voting. Certainly, in Mercer County, it's expected to get electronic booths. Under your bill, would it be -- is it going to be able to retrofit these computer systems that are in effect now, or will they need new machines to get that paper trail?

CONGRESSMAN HOLT: My legislation simply requires that there be a voter-verifiable, independent paper record. And how that is accomplished would vary from manufacturer to manufacturer and can be chosen by whoever selects the voting devices in each jurisdiction. There is technology available on the market today. Most of the major companies, and probably all of the major companies, are making retrofits available. We've passed the point where companies drag their heels and said, "This can't be done," or "This will be too expensive." They've realized now, as more and more states are demanding it, that it's a market they shouldn't pass up. And so, there will be strong competition in the market to provide machines that have this capability. It's my understanding that all the major manufacturers are providing retrofits for those jurisdictions that already have the electronic voting machines.

ASSEMBLYMAN GUSCIORA: Thank you, Congressman.

I'd like to open it up.

Vice Chair Linda Greenstein.

ASSEMBLYWOMAN GREENSTEIN: Thank you, Mr. Chairman, and good morning, Congressman. Good to have you. As one of the prime sponsors of the HAVA bill that we tried to get through the Legislature, I'm fairly aware of some of the issues, and obviously, we'll need to have some legislation soon. I hope that we will.

I am interested in your bill, though. Just a couple of quick questions on that. Have there been any reports of problems in New Jersey? Any irregularities suspected or any of what you spoke about? Has any of that been a report from New Jersey?

CONGRESSMAN HOLT: None of what I spoke about, and I can't think of any errors that have been attributed to electronic machines in New Jersey. But I would go back to my earlier statement--

ASSEMBLYWOMAN GREENSTEIN: It's hard to verify.

CONGRESSMAN HOLT: --where election officials have said, "We've had no problems." To which I say, how can you tell?

ASSEMBLYWOMAN GREENSTEIN: And then your bill would not specify when this paper record is made, whether it would be just kept on file or whether the voter would get a copy, let's say. It could be either of those systems?

CONGRESSMAN HOLT: What must be kept as the vote of record is the voter's selection in each of the items on the ballot. And that must be kept securely just as if it were the vote of record, because it would be the vote of record. If there were a recount, under my legislation, it is that paper record that each voter has inspected that would be recounted. If the voter were permitted to carry that or a copy of it out of the polling place, it seems to me it would just open the door for fraud. And therefore, if the jurisdiction wanted machines that gave each voter a receipt that said the voter had voted that day, that's fine. But any receipt that would detail the vote would breach the confidentiality of that vote, and therefore would be, I think, highly undesirable.

ASSEMBLYWOMAN GREENSTEIN: I guess what I'm really asking is not so much that the voter would be able to take the paper out, but

does your plan envision that the voter would take a look at the paper, or not necessarily?

CONGRESSMAN HOLT: Oh, absolutely. Each voter would have the opportunity to verify that vote on paper and -- before the electronic vote is cast. And when the voter submits the electronic vote, the paper vote is stored away as the permanent record.

ASSEMBLYWOMAN GREENSTEIN: And the paper vote would have the person's name on it?

CONGRESSMAN HOLT: No.

ASSEMBLYWOMAN GREENSTEIN: It would not?

CONGRESSMAN HOLT: No. It would maintain the full confidentiality of a ballot.

ASSEMBLYWOMAN GREENSTEIN: Okay. Thank you.

CONGRESSMAN HOLT: Yes.

ASSEMBLYMAN GUSCIORA: Assemblyman Payne.

ASSEMBLYMAN PAYNE: Yes. The purpose of this is just to be able to determine the number of votes that a candidate got that's accurate, as opposed to, as the question that proceeded -- the individual could not know-- We would not know who Bill Payne voted for. It would just be that the number of votes that were cast would match what came out of the machine. Is that correct?

CONGRESSMAN HOLT: That's right.

Some of the manufacturers have said they print a record of the ballots. But what they mean is, at the end of the day, they can reconstruct the ballots. But if there is an error, intentional or accidental, between the casting of the vote and the recording of the vote -- in other words, if there is a problem

with the software, those ballot facsimiles that would be printed out at the end of the day would just reflect that error, and there would be no way to recover the voter's true intention. My legislation says that each voter would have the opportunity at the time of voting to verify that that's the intended vote.

ASSEMBLYMAN PAYNE: They would be able to verify that that vote that they cast is the same that's recorded on that machine there.

CONGRESSMAN HOLT: Exactly.

ASSEMBLYMAN PAYNE: And that paper ballot, that paper receipt would then be stored somewhere. Or would it be necessary at that time -- well, perhaps it wouldn't be-- The paper receipt would be stored somewhere to be reviewed at some later time.

CONGRESSMAN HOLT: If necessary.

ASSEMBLYMAN PAYNE: If necessary.

CONGRESSMAN HOLT: Yes.

ASSEMBLYMAN PAYNE: Good. I would imagine, too, that each ballot is numbered -- each person when you sign on-- In a polling booth, before you vote, you're given this ticket to present to -- with a number on it. I would imagine that if you go-- Somebody knows who No. 12 was, because that person signs that. And so, if you can trace back, you can really reconstruct who No. 12 was, actually, if you go back in the machine. Because each vote that is cast, there's a number on the machine that tells what -- No. 30 voted for Joe Blow or not. I mean, I think you could really be able to tell somehow who voted for whom by going back. The 30th vote cast that day was by -- for so and so. And then you could determine who did that, actually, by going back into the records of finding out who was on that No. 30 ticket that was given out.

CONGRESSMAN HOLT: Not under my legislation. Under my legislation, of course, each jurisdiction would negotiate with the manufacturer to decide exactly what system they wanted to use. But each ballot would be confidential. There would be no way. Just as today, there is no way. You may, when you go to vote -- you're voter number-- Well, in your neighborhood, maybe you're voter 300, who's a Democrat. In my neighborhood, I'm usually voter three who's a Democrat (laughter), but--

ASSEMBLYMAN PAYNE: We're going to change that.

CONGRESSMAN HOLT: That number of the voter is only for purposes of determining who voted that day. But once the machine records the vote, there is no connection between voter No. 300 and the choice for candidate A or candidate B.

ASSEMBLYMAN PAYNE: Just one last, broader question. And that is, we have known for years, under all kinds of administrations, that it didn't matter really who was in control of the Senate or the House of Representatives down there. The fact is that New Jersey has been, we might say, short-changed over the years of all the money that -- the tax that we pay into the Federal Government and that which we receive back. And it doesn't matter which party is in power, it seems, as if-- That's the way it has been the case. I guess it's because the formula -- with New Jersey being a wealthy state, is contributing more for the other states that don't have it. What thoughts do you have or our delegation have or bipartisan delegation have to really rectify that, if at all? Or, maybe you can explain to us, since you are a rocket scientist, you can explain to us what the formula is? We have been saying this for years that we don't get our fair share back, but there's a reason for it, of course. I guess it's

tied in with our -- the wealth of our State and the per capita income, etc., etc. Perhaps briefly, you can tell us how that works?

CONGRESSMAN HOLT: Do you mean specifically for the HAVA bill?

ASSEMBLYMAN PAYNE: No. No. I'm speaking, in general. This is a broader question.

CONGRESSMAN HOLT: Oh. Well, the formula-based aid to states varies from category to category, whether you're talking about housing or school lunches or Medicaid. There's no question that New Jersey has suffered because our average incomes here in the state are higher, and the formulas don't reflect the fact that the cost of living is also much higher. And someone with a -- what might appear to be a perfectly adequate income in one state, is an inadequate -- would have an inadequate income in this state to keep a family of four fed, housed, and clothed, or whatever. So I don't know a general answer to that. With regard to this legislation, in particular the HAVA bill, I don't think it should be based on a state's calculated wealth. This is something that should apply, I think, to all states according to the number of voters and the expenses that would be incurred in complying with HAVA.

ASSEMBLYMAN GUSCIORA: Assemblywoman Previte. (no response)

Assemblyman Pennacchio.

ASSEMBLYMAN PENNACCHIO: Thank you.

If I may, through the Chair. First, just a note of irony. We have a rocket scientist, and I say that not disparagingly, who deals in computers all the time, and now the rocket scientist wants to take us back to paper and pencil.

It seems like we've gone full circle from the way that we deal with the process of voting, Congressman.

If I may, you said that you voted in the affirmative--

ASSEMBLYMAN GUSCIORA: Assemblyman, your mike is off (referring to PA microphone).

ASSEMBLYMAN PENNACCHIO: I'm sorry. Excuse me.

You had said that you did vote in the affirmative for this bill and that in the balance you thought the bill was good enough, obviously, because it was worth enough for your vote. One of the questions that we won't be dealing with this morning in the State's version of HAVA -- there's a question about voter identity. The Chairman had mentioned about not using Social Security numbers, which, quite frankly, I could understand. I think I could agree with that. But you don't necessarily have to use Social Security numbers -- am I correct -- as a form of identification?

CONGRESSMAN HOLT: I believe that's right. I believe that's right under HAVA.

ASSEMBLYMAN PENNACCHIO: Okay. Well, first, as a matter of principle, do you think that the first time that a voter is cast, to avoid any type of fraudulent activity, that there should be some type of verification of who that person is, so long as it doesn't interfere with the right of that person to vote?

CONGRESSMAN HOLT: There should be, I believe, an opportunity to verify, at some point, who it is.

ASSEMBLYMAN PENNACCHIO: You had said, if I can quote you, that the bill is not (*sic*) a law of the land, and as you know, that there was a bill and it was conditionally vetoed by the Governor. The Governor would

like to take a part of that bill, when it comes to voter identification -- of which you voted for -- and maybe put an onerous tag on it. For example, you could bring in 10,000 voter registrations without anybody ever having shown any proof of identification, dropping them at the clerk's office; and those voters, whoever they are, would have to be proved, as opposed to somebody else doing it, personally or through the mail. Do you see, potentially, that there could be a problem with something like that?

CONGRESSMAN HOLT: Well, that doesn't have anything to do with what I'm talking about today. When I say HAVA is the law of the land, I mean the Federal HAVA legislation. How each state chooses to comply with HAVA, legislatively through legislation or regulation, is up to that state. And that includes specifically how they implement the registration of voters. And that will vary from state to state as long as it meets the general conditions of the Federal Help America Vote Act.

ASSEMBLYMAN PENNACCHIO: But I assume the central premise of that-- I'm not saying it's like your bill, but also I can just see from your interest in this legislation that you're introducing very intimately, aware of what the contents of the bill were. You did vote for it. I think a central point to the bill, quite frankly, was the ability for people to vote and the ability to try to avoid doing fraud. Am I correct?

CONGRESSMAN HOLT: I suppose that we could say that it was to increase access and reliability of voting. I think that's how the authors would describe it.

ASSEMBLYMAN PENNACCHIO: At the most rudimentary level, marginally, it would be expected that you would try to somehow, somehow

allow everybody their ability to vote, but also try to avoid any fraudulent activity if we can.

CONGRESSMAN HOLT: Yes. And there is a balance between accessibility and reliability.

ASSEMBLYMAN PENNACCHIO: And you were comfortable enough with the bill, as a whole, which you said was probably -- has done more in the last 30 years to give people the access to vote. You're comfortable enough with the bill--

CONGRESSMAN HOLT: That's right.

ASSEMBLYMAN PENNACCHIO: --in total, when it first came out, to vote for it, and I appreciate that.

CONGRESSMAN HOLT: That's right.

ASSEMBLYMAN PENNACCHIO: And just in closing, I have a novel idea when it comes to the State receiving its fair share. Why don't we fight for not sending it down to Washington in the first place? Then we don't have to fight for our little pittance to get it back.

Thank you for your testimony, Congressman.

CONGRESSMAN HOLT: If I may just clarify a point that the Assemblyman raised. I don't see this as going full circle to revert back to paper ballots. It is a way of giving the voter ownership of the verification of the votes. And it's a way of maintaining all of the advantages of the electronic voting devices while removing the principle disadvantages. The advantages consist of such things as accessibility -- particularly for people with physical disabilities -- clarity, efficiency, speed, so that the tally of votes will be more reliable. There won't be circumstances like I experienced myself once, where a county clerk's arithmetical error -- well, assigned 9,000 votes to the wrong precinct. I think the

electronic machines will do away with that. Their principal shortcoming, however, is that there is no way that the voter can know that the vote cast is the same as the vote recorded. But now, with the parallel paper trail, the voter can know that. So it's not an anti-technology--

ASSEMBLYMAN PENNACCHIO: I wasn't disparaging, and quite frankly--

CONGRESSMAN HOLT: Yes.

ASSEMBLYMAN PENNACCHIO: --I don't necessarily don't agree with what you're saying. It was just a bit of irony that I wanted to point out. And again, I did appreciate your testimony. Thanks.

CONGRESSMAN HOLT: Good.

Thank you, Assemblyman.

ASSEMBLYMAN PENNACCHIO: Thank you.

ASSEMBLYMAN GUSCIORA: I'd -- just to add to the dialogue, before the Assemblyman takes over, most of us have printers on our computer, and I'm paranoid enough so that whenever I create a document I want to get a hard copy and also a backup, because you never know when your system crashes. So I think it is important that there be some kind of independent verification of that vote cast, much like a printer.

Assemblyman Gregg, welcome.

ASSEMBLYMAN GREGG: Thank you, Mr. Chairman.

Welcome, Congressman.

I know we're going to have more testimony, I think, on the HAVA bill, so some of my technical issues and questions I think I'll reserve and give the Congressman a break from some of it.

CONGRESSMAN HOLT: Okay.

ASSEMBLYMAN GREGG: I do want to walk through -- because you did make mention of some of your concerns on identification in the original HAVA bill. I just want to be clear that my understanding of it is-- In order to register, the appropriate form of identification -- not getting into when and who and where you give them to, because I think that will end up in a later discussion, and it really is our battle, I guess -- you can give them a driver's license, that becomes a valid form of ID, which is a time-tested document. In Jersey, while still not being very secure, it's a time-tested document. The second choice, I guess, is to have a portion of your Social Security number. And to be clear with anyone who is not following the issue, and I wouldn't think anybody out there isn't educated on it, is the last four numbers of the Social Security number, as opposed to the full nine numbers.

And I am going to test you, Congressman, as a rocket scientist, so you can tell me the exact amount of permutations that that would require with only (laughter) four out of nine. My sense is it would be a task a very large computer would need to do, if you have the original Social Security numbers; and if you don't have them, the concept of finding that person would be somewhat unlikely. But with that said, it probably could occur.

And the last form of ID that I'm aware of is a utility bill or something of that nature. It was your thoughts today that you thought that that was too conservative of a list of IDs. Because before I let you answer, I might remind you, for those -- and I know you live in the State of New Jersey -- some of us are more aware of the new Motor Vehicle Commission's concept of creating identification for the new digitized driver's license, which requires 18,000 out of 21,000 forms of documents, of which a utility bill happens to be one of the ones that registers points, but doesn't register anywhere near enough

points to get a driver's license. So one of the three identifications allowed to register for votes barely gets one point on the scale of becoming a digitized driver's license. Now, with all that said, not to be overly emotional, that -- how could this possibly be a list that is far too conservative?

CONGRESSMAN HOLT: If I left the impression that I thought that list of identification was inadequate, I didn't mean to. I didn't mean to speak to it at all.

ASSEMBLYMAN GREGG: I may have misunderstood you.

CONGRESSMAN HOLT: Yes.

ASSEMBLYMAN GREGG: I thought the comment was you had some issues with it, and I took that to mean that you thought it was too conservative. If it wasn't, then I certainly would retract the question.

CONGRESSMAN HOLT: No. What I meant to say is that there are a number of issues -- I think yet to be addressed, or to be addressed again in further legislation in coming years -- having to do with such things as same-day registration and a number of other similar things.

ASSEMBLYMAN GREGG: I'm glad to hear that, Congressman.

CONGRESSMAN HOLT: Yes.

ASSEMBLYMAN GREGG: With that, then, I want to go, as we say in our world, on the bill -- and following with Assemblywoman Greenstein and Assemblyman Payne's questioning, just so I'm clear. It does appear in some respects that moving to the technology may have been just a bit too fast, and I think that happens whenever something happens in life, we want to fix it immediately. And technology always seems to be the answer, and then, ultimately, we find out that the good news is it can do a lot of things, and the bad news is it can also do a lot of things. Maybe that's where we've gotten, and

I look back at my district -- and very close to yours -- you do represent two of my towns, as you know -- Sussex County, where we just left punch cards not that long ago. Quite frankly, I don't see Sussex listed as any of the areas that have had voter problems, even with punch cards, or any issues at all. And we have recently moved to the technology, which I do think, ultimately, will be a good thing, but it may require some adjustments as it goes.

I want to be clear that I'm looking at what you require in HAVA to us -- was that there would be a tape required in all of the machines, ultimately, that could be reviewed later. That no electronic machine -- and I do think that folks that are here -- there's no electronic machine that I'm aware of in the State of New Jersey that doesn't keep a tape that is a hard tape that is completed at the end of the voting cycle, that's pulled out of a machine and put into some secure place -- at least, required. Now, there may be some that don't do it, but it appears that your legislation did require that there had to be a tape -- meaning Congress's legislation. Is that correct?

CONGRESSMAN HOLT: I can't say whether all the machines in New Jersey do that. I don't believe they do. But what I would say is that my legislation requires that each voter be able to inspect his or her vote at the time of voting. That is the key difference.

ASSEMBLYMAN GREGG: I just wanted to be clear that I think -- and someone can correct me and we can have staff check it out -- that the systems that are required by the HAVA legislation are required to have a manual audit capacity, including a permanent paper record, which I think is something that may not achieve all the goals that you have in your legislation -- which I'm going to get to. But there is, what we're used to, in today -- which is that when you go in and vote, as Assemblyman Payne said, you'll go to a register, sign, get

a little ticket, sign the voter registration book so they will know that Guy Gregg came in, Guy Gregg got a receipt, Guy Gregg allegedly voted. I mean, that you could get that and walk out the door, I assume. But for the most part, they assume that you went into the voting booth, because they'll have the ticket that you gave them and know that you walked in, so they can balance the number of people who went through that process with the number of people that are kicked out of the machine for that district at the end of the day. And that was done with punch cards. I assume that was done with mechanical machines that were in Morris County prior to the new electronics, and I know it's being done with the computer read-outs that come out of our machines.

ASSEMBLYMAN PAYNE: Point of information, please, to the -- Mr. Chairman?

ASSEMBLYMAN GREGG: I yield to Assemblyman Payne.

ASSEMBLYMAN PAYNE: Yes. Did you not say, Congressman, that your legislation allows the voter to be able to check their vote, the vote that they cast, with that which is in the machine? That that's the purpose of your legislation--

CONGRESSMAN HOLT: That's right.

ASSEMBLYMAN PAYNE: --not that there is already a tape or something in the machine. Yours goes a step to where Bill Payne or Guy Gregg can, in fact, look at the vote that he just cast--

CONGRESSMAN HOLT: That's right.

ASSEMBLYMAN PAYNE: --to make sure that that's what's there.

ASSEMBLYMAN GREGG: And I understand that.

ASSEMBLYMAN PAYNE: Currently, the machine has this tape in it, but you or I cannot review that, as it stands now. I think this is what the legislation addresses.

ASSEMBLYMAN GREGG: I'm walking up the stairwell, and I haven't gotten to the top yet. Thank you very much.

ASSEMBLYMAN PAYNE: Right. Rather slowly, though.

ASSEMBLYMAN GREGG: So that's where we are. When you're in the minority, you get to be slower (laughter). There's only two of us. We get to talk longer.

Going right to where Assemblyman Payne is, then, your legislation goes to the next step, which is to give more information than that. And that's where I think some of us are a little confused. And I want to be very clear that now I'm going to go in, do all of what I said, and now I press the little machine, and I vote. Now, it's going to give me a receipt?

CONGRESSMAN HOLT: I never used the word receipt. Because receipt implies that the voter can carry it away. I prefer to say a record that the voter can verify, so that there's an independent audit trail.

ASSEMBLYMAN GREGG: Well, how do I know -- excuse me, through the Chair-- Receipt -- I just happen to be a retailer. I used the word receipt.

CONGRESSMAN HOLT: Right. Yes.

ASSEMBLYMAN GREGG: A document. That that document will not be a physical document. It will be something different than what I see now. What I see now is an electronic board, and it says, Congressman Holt, and then there's a place to put an X. And then I put the X next to the other person (laughter). Only kidding, and I shouldn't be.

ASSEMBLYMAN PENNACCHIO: No, he's not.

ASSEMBLYWOMAN PREVITE: Shame. Shame.

ASSEMBLYMAN GREGG: I was not one of the three you mentioned in your statement. So I press a button and it shows the *X* there -- at least the way my ballot works. So I see -- and I'll vote for you this time. So Congressman Holt has an *X*, and I'm feeling that if I hit the out-of-here-button, cast your vote, that I really voted for you. Now, will your legislation require some paper document, or will it just -- when I hit *cast your vote* -- remind me again that I voted for you on the computer screen?

CONGRESSMAN HOLT: It would require a paper record in addition to what you see on the screen. I think most of the machines, maybe all of the machines, have an ask-again feature. Before you submit the vote, it says, "Is this your intended slate? This is how you intend to cast your votes?" However, when you push the submit button, if you have only the electronic machine, there could easily be an error in the software. And this is what the computer scientists have spoken to so exhaustively and eloquently. That whether it's an accidental error or an intentional error, in other words hacking, the vote recorded may not be the same as the vote cast. And the voter would never know, because all of this is done in secret and there's no way that the election officials can go back and check. That's why the verification should belong to the voter, not to a vendor or manufacturer who says, "Oh, we checked that machine last week, and it's just fine. Trust us."

ASSEMBLYMAN GREGG: So they'll get a document that they give back to somebody?

CONGRESSMAN HOLT: Yes. It might actually drop into it. Several versions of it are around. One is they might see the document behind

a Plexiglas or a glass window and then it would drop into a box or something of that sort.

ASSEMBLYMAN GREGG: So it's a document they can't keep. And what will it say? I think that's getting back to Assemblywoman Greenstein and Assemblyman Payne's questions that I want to be clear on. Does it say, "Rush Holt, one? Does it say Guy Gregg voted Rush Holt, one?"

CONGRESSMAN HOLT: It would, in effect, be what you saw on the screen. And whether the format is exactly the same, I guess, depends -- would vary from manufacturer to manufacturer. But it would be something like what you saw on the screen where you voted for candidate A for office X and you voted for candidate Q for office Y, and the voter would be able to verify that. And the way it differs from what you described before, where there's a tape inside the machine, is the tape inside-- What HAVA requires in the way of a paper record can be, and in most cases usually is, printed out at the end of the day. So it's not a contemporaneous paper trail, nor is it voter-verified paper trail.

ASSEMBLYMAN GREGG: Now, I have no problem with that, through the Chair. Now, at the end of the night, now, we'll have three things to look at, theoretically. We'll have the voter registration book. We'll have the tape out of the back of the machine, and we'll have a box of these little receipts or whatever, however it's done. They could actually be their own separate roll in its own little roll, but you'd have three things -- what the machine has, a continuing vote count, the voter registration, and now this new box of whatever they are. What happens if they don't match?

CONGRESSMAN HOLT: My bill specifies, and I think the preferable way to design a bill would specify, that the record that the voter has

personally inspected is the vote of record. In other words, the parallel paper trail is the vote of record. And if there's a discrepancy between the electronic count, which might be flawed for some reason, some indeterminate reason-- If there's a discrepancy between the electronic count and the paper count, the paper count wins. So, I guess, paper beats silicon in that game. (laughter)

ASSEMBLYMAN GREGG: I know you have a long day. I apologize.

CONGRESSMAN HOLT: Let me just finish on that point. This independent paper record most of the time would be locked up and never used. It's only if there is a recount. Now, my bill specifies that there would be a spot check, random recount in one-half of 1 percent of all of the precincts. Or, if a judge orders a recount for some reason, there would be a recount. But otherwise, there would be no need to go back and look at those paper records.

ASSEMBLYMAN GREGG: Thank you very much. You've been very patient and honest.

I have to share with you, while it makes sense, it does appear to be somewhat-- I visualize, and until you ever have a name against a vote, no one's ever going to know if their voted counted, because all they're going to know is something happened in the system. Because I could envision having the register being short. Suddenly the register is at 400, and you got 405 pieces of paper. What do you do now? I mean, now you've got a real problem, because the only people who were registered were 400, but you have 405 coming out. Interesting -- Hudson County. No (laughter). I'm not so sure what you do with that then, and you end up with a bunch of attorneys trying to figure out what you do, and that's no different than where we were before. It does appear to be space technology where the best thing to do is have redundancy. So, if you're going

to argue to -- that way, what you can say, redundancy is good. And then when you get to redundancy, you come back and say, "At what cost?" And I guess that's what we'll ultimately be debating. But I thank you for clarifying the issue. It was enlightening for me. Hopefully, it was for the other members. And thank you for taking the time to come up from Washington.

CONGRESSMAN HOLT: Thank you, Assemblyman.

ASSEMBLYMAN GUSCIORA: Thank you.

Mr. Payne.

ASSEMBLYMAN PAYNE: Just one last question, but another clarification. Congressman, I vote. I look through a Plexiglas window, and I see that my vote matches what is on the machine. Right? I vote. I look through the glass, and I see that it doesn't match. At that point, it doesn't match. Is action taken then at that point? I call the person that's there and say that that's not what I voted or how does that--

CONGRESSMAN HOLT: Each board of elections or each jurisdiction now has a procedure for dealing with a spoiled ballot. It would be the same procedure. If the ballot is spoiled, it's invalidated and the voter is given a new ballot. In some jurisdictions, the voter is only allowed to do that two or three times before he is thrown out of the place. But it would be whatever procedure is used for a spoiled ballot.

ASSEMBLYMAN PAYNE: That's provisional ballots, I suppose -- would be used at that point to correct it.

CONGRESSMAN HOLT: That's right.

ASSEMBLYMAN PAYNE: Thank you.

ASSEMBLYMAN GUSCIORA: Thank you.

I think we'll adopt Assemblyman Gregg's appreciation for the sake of time, but he simply stated that we do appreciate all our members coming up to visit us from time to time, and we hope that the rest of your colleagues will join us at some point.

Thank you very much.

CONGRESSMAN HOLT: Thank you. And let me just finish by saying I am very pleased that this Committee exists. And I see lots of opportunity for cooperation in the coming months and years.

Thank you.

ASSEMBLYMAN GUSCIORA: Thank you.

I'd like to call another visitor from Washington -- Doug Chapin from *electionline.org*, who will also discuss HAVA with us.

D O U G C H A P I N: Good morning, Mr. Chairman.

ASSEMBLYMAN GUSCIORA: Good morning.

MR. CHAPIN: I'll make sure that's on (referring to PA microphone). Now it's on, okay. Wonderful.

Good morning.

My name is Doug Chapin. I'm Director of *electionline.org*. *Electionline.org* is a nonprofit, nonpartisan, nonadvocacy clearinghouse of election reform, news information and analysis, sponsored by a grant from The Pew Charitable Trusts. I wanted to come here before you today. I can't provide the insider view that Congressman Holt can give you. I can't provide you with the State's specific view that I think you all know better than I do. But what I thought I would do is take a few minutes and share the view from Washington on where HAVA implementation is in Washington, D.C., what the

progress is in the states across the country, and then, perhaps, answer your questions about where New Jersey fits into that picture.

The issue on election reform in 2004 is very different from what it was in 2002. Back in 2002, when Congress was still debating the legislation that became the Help America Vote Act of 2002, the issue was, would we get election reform? Would the crisis that began in Florida in November 2000 be followed through with Federal legislation in Congress?

In 2004, now that we have that bill, the focus has really changed to: How will it work now that we know that it's supposed to happen? We just came out with an annual report. I know all the members of the Committee have it. I have copies over here. It's our third annual report entitled, What's Changed, What Hasn't, and Why. In that report, we took a look at where the states were at the end of 2003, the beginning of 2004, with respect to election reform: where they stood on preparations for the 2004 election, where they stood on implementation of the Help America Vote Act. And what we found was that when voters return to the polls in 2004, many will find that the machinery, the procedures, and other aspects of their voting experience have changed as the result, not just of the 2000 experience, but of the Help America Vote Act.

Just as many voters, though, across the country will not notice any change, and many of them may be surprised to learn that despite the attention that was given to election reform -- despite the gallons, drums, oceans of ink that have been spilled on the issue since 2000 -- that not as much has changed as maybe everyone had thought. There will be, in 42 states of the country, different or new machines in at least some area of the state. New Jersey is one of those. Yet, even though punch cards were held up as a symbol of what was

wrong in Florida in 2000, jurisdictions in as many as 22 states will still use punch cards in 2004. And yet, as Congressman Holt and you've already discussed, sometimes change is a good thing. Sometimes change is just change. Again, Florida is a very good example of that.

These new machines -- these new electronic touch-screen machines, which in 2001 and early 2002 were the next big thing in elections -- are now really the next big problem in elections. They are one aspect of the voting process that many state and local and some Federal policymakers are struggling with in terms of how it fits into reform. Is it an improvement, or is it just a different source of problems?

The Help America Vote Act does establish new minimum requirements. All states have made an initial effort at those various requirements. Some states have gotten farther than others, which is not surprising given that we don't have a national system in this country. We really have 50 states, 50 systems. And so some states are going to be stronger in some areas, some states are going to be weaker, and bringing everyone up to a national level is going to take some time.

I wanted to give you a view from Washington. I know that it's a common theme in the questions this morning that New Jersey, like some states -- my home state of Virginia being another -- is a donor state that pays more money into the Federal Government than it gets back. I wanted to, at least, enlighten you as to where, at least we at *electionline*, think the money is for election reform.

As the Chairman pointed out, you've gotten only a fraction of the money that was authorized on the Help America Vote Act. That's a result of three things, one of which probably won't surprise you, two of which might.

The first, that won't surprise you, is that authorization is not appropriation. It's a time-honored way of life in Washington budget politics that there are often gaudy numbers, in the authorization section of the bill, that shrink precipitously when it comes time to write the appropriation. And election reform is no exception.

The Help America Vote Act was a watershed event in the relationship between the Federal Government and state and local election officials in that, until 2002, the Federal Government had never paid a dime to state and local election officials to help them administer their elections, even though the Federal Government, basically, elects its officials on the backs, if you will, of state and local jurisdictions. So that promise of \$3.86 billion over three fiscal years was a tremendous sea change in the way Washington works with local officials. Unfortunately, once it came time to do the appropriations, things were not so smooth. Because of really unrelated delays and politics in Washington, the initial \$2.1 billion authorization, in Fiscal '03, was not enacted until early 2003. And of that 1.5 billion to date, only a little over 650 million has been released. That's due to another reason which is a little more surprising.

The centerpiece, as many of you may know, of the Help America Vote Act was the new Federal agency, the Election Assistance Commission. The Election Assistance Commission was a four-member, bipartisan commission intended to serve as an official clearinghouse of information, but more importantly as the source of this money that was authorized by the Help America Vote Act. According to the text of the Act, that commission was to have been appointed and confirmed by late February of 2003. I can tell you that the members were finally confirmed in the last gasp of the first session of Congress in December. Those members were sworn in over the Christmas

holidays. And all four of them, including their new chairman, Commissioner Deforest Soaries of New Jersey, went to work literally on January 2, setting up a brand new commission. That's the good news.

The bad news is, is that under the money that's already been appropriated, the commission was only appropriated \$2 million for its operations. I can tell you that between the commissioners and the staff that were transferred to them, their salaries and benefits will eat up about 1.2 million of that, and with the remaining left for hiring staff, establishing an office, setting up ethics procedures, everything that a Federal agency needs to have. So right now, as we speak, they are scrambling to put together an operating budget and scrambling to find a way to do the first steps toward releasing at least that initial money to the states that was promised in the FY '03 appropriations bill.

In this year's appropriations bill, the White House, against an authorization of a little over a billion dollars, only requested 500 million. Across the country, state and local election officials fought, lobbied, tried to convince the Congress that it was necessary to up that money. To their surprise and to their delight, it was upped. And in the Omnibus Appropriations Bill, again delayed, but finally enacted by Congress earlier this year, there is another \$1.5 billion, bringing us to a total appropriated of 3 billion against 3.1 authorized.

Now, as one of you mentioned, the third-year authorization is a little over 800 million. The President's FY '05 budget request includes a whopping total of 65 million -- 50 million for the Help America Vote Act and another 15 million in, essentially, accessibility grants. I can assure you that there are-- The same coalition of people who are lobbying to get that number bumped upwards in the FY '04 bill are hastily assembling to do the same for the

FY '05 bill. It's much too early to tell whether or not that figure will be there. But I can tell you something almost for a certainty, that money will not be available to the states before the 2004 elections.

Where does that leave states across the country? It leaves them-- I'm reminded of a joke that the pastor of my church told almost a year ago. We're doing a building program at our church -- adding a wing and improving the school. And he got up and he said, "I have good news and bad news about the capital campaign. The good news, ladies and gentlemen of the congregation, is that we have all the money we need to begin building right away. The bad news," he said, "is that most of that money is still in your pockets." And that's where state and local election officials are with respect to their election reform money. They have been promised money which will go a long way toward helping them meet the mandates of the Help America Vote Act, which will go a long way toward helping them create the things that they've planned for in their Help America Vote plans. But they have not yet seen the money because of delays in appropriations in Washington and delays in appointment of the commission.

Where does that leave us? That leaves us where we found ourselves at the beginning of 2004. Many voters will see changes at the polls in 2004, many more will not. Some of that is due to the funding delays. Some of it is due to a brand-new issue which I know we've already ventilated quite a bit today with Congressman Holt, the issue of security.

The Help America Vote Act -- if I heard it once, I heard it a thousand times -- was designed to make it easier to vote and harder to cheat. And that bumper sticker or that simple description of the bill, I think, nicely captured the balance that went into the Help America Vote Act. It was

balancing the competing priorities of integrity of the system -- which generally, but not uniformly, was a concern of congressional Republicans -- and accessibility to the system -- which again generally, but not uniformly, was a concern of congressional Democrats. And many of the compromises that we saw in the Help America Vote Act are a result of balancing those two competing priorities.

What we've discovered since then is that there's a new emerging priority which complicates that balance, and that's the notion of security. These new electronic voting machines, which were supposed to make it more convenient or more accessible for disabled voters to vote, are now not seen as secure. These new machines that were supposed to be flexible for voters for whom English is not a primary language are not seen as secure.

These new machines which were designed to give voters a sense that their local elections were being brought into at least the latter half of the twentieth century, if not the twenty-first, are not seen as secure. So how states and localities deal not just with the lack of funding, not just with the lack of guidance from Washington, but with this emergence of this new, really urgent priority -- one which is so urgent that it actually brought down a \$22 million Pentagon program to test Internet voting in the fall -- how states deal with that will be the sort of thing that we'll be watching at *electionline*, and something I know all of you will be grappling with here in the Garden State.

With that, I'm available for any questions.

ASSEMBLYMAN GUSCIORA: Thank you, Doug, for that overview.

I was told, and I don't know if it's true, ironically, that Florida has applied for a waiver from HAVA requirements. If true, what does that mean?

And also, if the Feds do not give us the money necessary to implement it, is it possible that this State could also opt out of the program?

MR. CHAPIN: The states can't opt out. There's been some concern, and as the money is delayed and as the commission slowly grinds into existence, there has been talk in Washington of either pushing back the deadlines or finding some way to give states an out. I know-- We at *electionline* sponsored a conference earlier this year, where the Wyoming Secretary of State got up and, in a room full of 250 people, said, "I will go to jail before being forced to implement this mandate without funding." So it's a difficult situation.

But there's nothing in the bill that allows states to opt out. All it does is allow them to delay implementation of various things in the Act. And Florida is one of -- I have at least 24 states that have requested waivers, both for replacing old machines and for implementing the new statewide database by 2004.

ASSEMBLYMAN GUSCIORA: Thank you.

Are there any other questions from any of the Committee members?
Assemblyman Pennacchio.

ASSEMBLYMAN PENNACCHIO: Briefly -- thank you, Mr. Chapin -- could you just describe your organization and your mission statement, please?

MR. CHAPIN: Certainly. We are *electionline.org*. We're a nonprofit, nonpartisan, nonadvocacy clearinghouse created in response-- After the 2000 election, as many of you know, there was a huge explosion of activity on election reform -- Federal, state, and local governments got into the act, task forces of every stripe, advocacy groups. The concern was, that with all this

activity at so many different levels and in so many places of the country, there was no one place that people could go to for comprehensive, unbiased, and reliable information on the state of play on election reform, if you will. So our role is, really, we track news across the country. The name of the project is also our Web address -- *electiononline.org*.

Every day we collect news stories from around the country on implementation of election reform, reports of problems, new developments in technology, and the like. We do the annual report. We also did a report on the early primary states, where they are on election reform. We do a weekly e-mail newsletter that looks at the news of the week, and we're the only publication, if you will, in the country that does original reporting on election reform across the country.

So we are there to serve as a resource to policymakers, like you, to journalists across the country, not just to understand what's going on in their own state and what's going on in Washington, but how their local experience fits in to the national experience of election reform.

ASSEMBLYMAN PENNACCHIO: And if I may, through the Chair, you said that the bill -- monumental in scope -- not using your words, but it was pretty balanced -- I think that was your word -- between the ability to vote and -- versus your ability to keep. I don't know if you followed, but the Governor conditionally vetoed an implementation of HAVA, and one of the concerns that we have on our side of the aisle is that third-party voter registration -- somebody, a group could come in and just throw 10,000 applications on a county clerk's desk without any identification. And the bill, as written now by the Governor, we would have to accept that. Which flies in my (indiscernible) -- flies in the face of HAVA. And you said that we didn't

have the ability, quite frankly, to opt in or opt out. And I don't know how much of an ability we have to implement, whether that's opting out too much. Do you have an opinion on that, because you sound like you'd be pretty much, probably against something like that? Because again, it would take away verification of somebody, of that person, whether or not their -- the person that's going to be voting or the 10,000 people, whether they're going to be voting.

MR. CHAPIN: Well, I'll respectfully decline the opportunity to support or oppose it, but I can at least put it in context around the country.

ASSEMBLYMAN PENNACCHIO: Well, your opinion would be fine.

MR. CHAPIN: My opinion is that New Jersey's experience is consistent with that of a couple of other states. I think it's not too far to say that the voter-identification compromise in the Help America Vote Act was a classic congressional compromise. It was a sweeping requirement imposed on a very narrow group of people, which I think was the way that it was necessary to get the bill done. That said, there are other states which have taken that narrow voter-identification requirement and have sought to expand it to all voters. And while that's been successful in some states, other states like Mississippi and Kansas have actually had Help America Vote Act implementation legislation run aground on that issue, because of the same kind of partisan division you all seem to be experiencing here.

ASSEMBLYMAN PENNACCHIO: Through the Chair, we're not looking to expand HAVA. We're looking just to implement it. And what the Governor's veto did was actually just the opposite, where he would open up the

door that would negate some of the things that HAVA did, reference to our verification.

MR. CHAPIN: Right. And I guess there are two things: One, I think, is going to be a natural result of the policy process, and that's where to draw the line. I've discussed-- The issue of voter identification is unique, I think, to election reform in that in many ways the partisan difference, I think, is actually consistent with the policy difference as well, where these two worlds of integrity and accessibility rub up against each other. And while you could agree on that in--

ASSEMBLYMAN PENNACCHIO: Respectfully, I disagree. I don't think that -- you may argue accessibility, but I don't think we have to argue that the sides have integrity arguing that accessibility. I don't think integrity versus our accessibility. It's just two different points of view, that's all.

MR. CHAPIN: Well, the two different points of view, I agree, but I think everyone would agree that, in general, that those are important to have. But when you're talking about identifying an individual voter and that individual voter is at risk of not being allowed to cast a ballot because he or she doesn't have proper identification, then those two worlds are -- it becomes almost a zero-sum game. So different states have taken different approaches. Some states have said, "We'll just ID everybody." Other states have simply enacted what's in HAVA, choosing either to postpone that fight for another day or duck it entirely.

You all are having the same fight in an uniquely different direction in dealing with who's allowed to register. And that's -- the actual issue that you have right now is one that is an open question, that the--

ASSEMBLYMAN PENNACCHIO: Respectfully, through the Chair, I don't think we're arguing who's allowed to register, who's allowed to vote. There's no argument at all about that. But just as important as it is for somebody to cast their vote, if somebody that is fraudulently trying to cast an additional vote, that may negate that vote that that person that had all that legal right to vote in the first place has just cast. So I think there should be a balance and there is an importance. And I'm sorry if I cut you off.

MR. CHAPIN: No, that's all right.

I think -- but when you're talking about who gets onto the rolls -- if you live in a state where you're required to be on the registration rolls to vote, denying someone registration is tantamount to denying their right to vote. And so where there are issues as to what kind of identification is required -- and again, there is a wide range of what's required. There are -- I want to say -- as many as seven states where they are allowed to ask for the full Social Security number, because they got a waiver under the Privacy Act -- Kentucky being one them.

There are other states where they generate a completely unique voter identification number. But the issue that you're talking about is whether or not, or in what circumstances, someone is required to show identification when registering -- is an open question. The Act says it's by mail. That then begs the question of, "Well, if I don't register by mail, if I register with the Deputy Registrar at a subway stop, or if I give it to a real live person who then delivers it for me, does that have the same lack of reliability that I am who I say I am, that I'm required to show ID?" And I think -- and that's the policy issue that many states like New Jersey--

ASSEMBLYMAN PENNACCHIO: But, respectfully, through the Chair, that was already addressed. That was addressed by smarter people than me down in Congress. They looked at that bill, and they said part of making sure that people don't cheat is that we verify at least the first time that they vote. This is not this side or myself talking about this. This is something just implementing something that was already spoken to bipartisanly by both groups, both sides of the aisle, down in Washington. Am I correct?

MR. CHAPIN: All right. Yes, sir. But do remember that that identification requirement only applies to people who register by mail and appear to vote for the first time.

ASSEMBLYMAN PENNACCHIO: For the first time.

MR. CHAPIN: Right.

ASSEMBLYMAN PENNACCHIO: Which doesn't seem like--

MR. CHAPIN: But, for example, if I were to go to my state DMV and register in person and then go to vote, I wouldn't be required to show ID, even if I were a first-time voter. It's only people who register by mail. And so now the question is, if someone doesn't really register in person at a registration office but also doesn't register by mail, does that tend toward the more arguably reliable in person or to the more arguably unreliable in mail, therefore requiring identification? And that's the policy issue that I think New Jersey is actually one of the first out of the box to grapple with. So, to a certain extent, what you all work out on that issue may be instructive to other states on the very same question.

ASSEMBLYMAN PENNACCHIO: And, through the Chair finally, you think it's the State's purview to "work that out," as opposed to just implementing what HAVA originally set?

MR. CHAPIN: Again, HAVA is actually very lenient with the states and when it comes to implementation. What we don't yet know is what role and how aggressively the United States Department of Justice, which has the enforcement authority under HAVA, will come down on states that don't qualify under the minimum standards, and how lenient they will be with saying that someone is functionally in compliance, even though they don't necessarily have a law on the books. So, until you know how hard Washington is going to come down on a state or a locality that does not meet the technical requirements of HAVA, you don't know what the consequences are of not passing a bill that, at least, addresses the black letter of HAVA.

ASSEMBLYMAN PENNACCHIO: I'm sorry. This is -- my final statement, is that, coming down-- Could that possibly mean that -- withholding some of those funds? That when they ever do get around to appropriating them, unless we do have compliance with the intent of what HAVA was originally--

MR. CHAPIN: And they've not--

ASSEMBLYMAN GUSCIORA: Just to interject on that. That was going to be my question. What is the consequences of being out of compliance with HAVA? Is it just the money or will the Governor be arrested by the Attorney General?

MR. CHAPIN: I wish I could assure you -- no one knows. To a certain extent, it's like when I deal with my kids. It's kind of, we'll see. That could be good news, that could be bad news. (laughter)

ASSEMBLYMAN GUSCIORA: Assemblyman Gregg.

ASSEMBLYMAN GREGG: Thank you, Mr. Chairman.

Thank you, Mr. Chapin, for those answers.

Just to finish that line of questioning, to clarify for me, is-- HAVA has a certain set of identification standards to which you have stated that there was some debate across the 50 states, of their congressional and senatorial delegations, on whether they're too open, basically -- I think is what you were testifying to -- that many states wish to have them even more restricted. Would I be correct in that? Not meaning to get you where you don't want to be, but it seemed to be the underlying current of giving us some advice about other states that have already tried to go stricter.

MR. CHAPIN: Certainly, I will-- Let me answer the question I wished you'd asked, if you don't mind. I think what you're getting at is--

ASSEMBLYMAN GREGG: Sooner or later, one of us is going to get the right question. (laughter)

MR. CHAPIN: That's right. That's right.

ASSEMBLYMAN GREGG: So it would be far easier to do it your way. (laughter)

MR. CHAPIN: No. No. The issue is, is that the issue of voter identification predates HAVA considerably. The United States Department of Justice dealt with many states under the Voting Rights Act, including my home state of Virginia, wanting to implement expanded voter identification. As a result of that, many states -- due to their own legislative or policy processes -- have either enacted or debated voter identification bills beyond what's in HAVA. That had sort of settled down pre-HAVA, but then HAVA created a new incentive for some states to revisit the issue. As a result, there are some states -- and if I don't have it in front of me, I can provide it to the Chairman -- that have actually enacted broader voter identification requirements since HAVA. But there are some states, due to their own process, who have taken the

narrow HAVA requirements and have said, "We're not only going to require it of people who are specified in HAVA." There's nothing in HAVA that prevents a state from enacting universal ID, if they do so by their own state policy process.

And again, my home state of Virginia, as an example-- The poll worker in my precinct is my kid's preschool teacher. I've known her for eight years and seen her every day for years, and yet every time I go to the polls, if she's at work in the desk, I have to show her some ID. She has to record my driver's license number before she can give me a ballot. That's the law of Virginia, and there are similar laws in place in other states across the country.

ASSEMBLYMAN GREGG: Thank you for answering the question I couldn't find, and I mean that. Simply stated, you're saying that there's nothing in HAVA that allows (*sic*) a state to create a more strict ID requirement. The next question that comes after that: Like Virginia, in other words, you have to show an ID each time. We're using the word conservative-liberal. What we really mean is that a stricter form of ID -- Virginia did that, and that's not a problem with HAVA. If a state were to go the other way and to become less ID-driven, for lack of a better term, is there a potential for the Federal Government to not have us in compliance for that?

MR. CHAPIN: There's nothing in the Act that prevents a state from requiring more ID from states.

ASSEMBLYMAN GREGG: What about less? What about less? Through the Chair.

MR. CHAPIN: It's not specifically addressed in the bill, but from what I know of Federal preemption, as a recovering attorney, one would at least

argue that that at least opens the question of potential Federal enforcement, whatever that potential Federal enforcement may be.

ASSEMBLYMAN GREGG: Which ultimately could, as a recovering attorney, mean that we don't get all our money?

MR. CHAPIN: That again, depending on what the Department of Justice decides to do, it could at least create a compliance issue, whatever consequences that entails.

ASSEMBLYMAN GREGG: Thank you.

Now, on to a question on finance, because there's been testimony specifically by you on how much money it is and whether it's been allocated or appropriated. We understand that clearly in New Jersey. We do it, too. Of that money -- and I think 800 million was thrown around and a couple of billion was thrown around -- how much of it, if you can give us a feel, is driven for, for lack of a better term, administration, non-machinery; and how much of it do you think is, or is it specifically, dedicated for the actual hardware -- computers and things of that nature for compliance?

MR. CHAPIN: One facet of HAVA that actually was very favorable to state and local election administrators, that it's largely -- it's discretionary for the states. The only money that's really been released, other than some small accessibility grants, is \$650 million, through the General Services Administration. Of that, 325 million was so-called early money, or planning money, so that states could do their HAVA plans and begin. Some states used it to reimburse themselves for machines they had already bought. The other half was the so-called *punch card lever buy-out money*, for states that had qualifying punch card or lever machines that wanted to either replace or upgrade those machines in accordance with HAVA. That's the only money that's been

released. The bulk of the money that's left -- the over \$2 billion that's still on account, if you will, with the new commission -- are so-called requirements payments. Those are to be used for states to meet their requirements for HAVA.

And what we found at *electionline* -- and looking at states in momentum (*sic*) is exactly what we found -- is that it varies state to state. Some states, like Georgia, which went out and bought a statewide voting system, are spending some of the money reimbursing themselves for that, but are then focusing on other areas that they hadn't yet spent it on.

The neighboring state of Pennsylvania, which started to build a statewide voter database pre-HAVA, is using some of that money for that and then is also looking at voting machines. Other states that already have qualifying voting machines, or machines that they're happy with, are focusing on databases, provisional voting, or other. But there's very little specification in HAVA about how states should spend the money, only what they should accomplish once they're done spending it.

ASSEMBLYMAN GREGG: The last question, through the Chair.

Does your organization compare states as to how they're doing in compliance, specifically, in the mechanical side. In other words, how many -- you just stated that Georgia put a complete system in. So you know Georgia is in full compliance with machines. Do you do that for each state?

MR. CHAPIN: Yes and no. Yes, we do have information on each state, in that we know what states have done. We just did, when we released the annual report -- we did a quick study on what percentage of voters across the country, at least based on census technology-- One of the features at the Web site is an interactive map that will give visitors the opportunity to see what systems are used in their state and others.

What we don't do -- we don't issue report cards. We do not say that New Jersey gets this grade, and Georgia gets a better grade, and Hawaii gets a worse grade. We do make the facts available, and we are well aware that policymakers, like you, and journalists, like many of them sitting behind me, will then do that with that information. But we are -- our intent is to have it available. And if we don't have it, to initially say, well, we don't know -- but to try and help policymakers, and find it.

ASSEMBLYMAN GREGG: Now, I assume that you were coming to New Jersey today from Virginia, so you might take a look at your paperwork, a little bit, to see how Jersey was doing. So, without asking for a report card, are we in compliance with our voting machines, do you know, or can you get that?

MR. CHAPIN: I think right now, because of the tie up of your HAVA implementation bill, you're behind a lot of the states in terms of implementing even the basic notification's provisions on provisional voting. But, to be honest, lots of the states are struggling with the statewide database, haven't begun. Lots of states are struggling with the security issue.

One example being Ohio. Ohio had moved forward very quickly on trying to put together a statewide list of machines that counties could buy. But then with all the concerns about security, that's been hung up, so with the result that many counties in Ohio won't have new machines in 2004. So New Jersey is behind a lot of the states, but much of that delay is the result of delays from Washington and lack of funding. But I think, state-specific, the failure to date to pass the HAVA bill puts you behind a lot of the states, as far as implementation is concerned.

ASSEMBLYMAN GREGG: Thank you for your answers.

Thank you, Mr. Chairman.

ASSEMBLYMAN GUSCIORA: I just wanted to bring up one other subject really quick. It was Rush Holt's proposal. Is there a consensus out there that it's a legitimate concern, and are there other states that are acting on requiring a paper receipt?

MR. CHAPIN: It's a huge issue right now. There are still state and local officials who believe that voter-verified audit trail, paper receipts, whatever name it goes by, are not a good idea. They feel like, that, the redundancy that's already built into the election process with registration books and machine counts and the like are necessary. But I think given voter interest in it, given media interest in it, given-- This morning, I checked. I think Congressman Holt's bill now has 114 co-sponsors in the House. Given the growing issue, it's definitely an issue.

Palm Beach County, the birthplace of election reform (laughter), has recently announced that it will go to voter-verifiable paper trails in the very near future.

ASSEMBLYMAN GUSCIORA: Assemblywoman Greenstein.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Just a historical question. Have there been any earlier incarnations, I guess, of election reform before HAVA, before the Florida-generated election reform, and have the issues been similar?

MR. CHAPIN: Sort of. It's come up. During my time on the Hill, there was a debate over the accessibility for voters with disabilities, and much of that came down to making it possible for, not just physically accessible, the polls, but giving them machines that were accessible in the polls. There were discussions about allowing, requiring, permitting states to ask for more identification. HAVA became a vehicle not just for addressing Florida, but sort

of a comprehensive Federal response to many of the issues that have been percolating pre-2000. So there is really very little in HAVA, I guess, from a historical perspective that's new. It just feels new because it's got \$3.86 billion in at least promised Federal funds behind it.

ASSEMBLYWOMAN GREENSTEIN: Okay. Thank you.

ASSEMBLYMAN GUSCIORA: Assemblyman Payne.

ASSEMBLYMAN PAYNE: Yes, just to revisit this issue of voter identification. There are certain types of identification that are more readily available -- I could say in certain communities or different economic groups, etc., etc., etc. That whole issue of identification, voter identification, that what's required -- has that been put to bed yet in a fair manner? And that those who are supporters of this -- have we come up with a solution that says that there is a fair measure to be applied across all communities?

MR. CHAPIN: Congress certainly feels like it's been settled. In HAVA, I will tell you that there are groups that are concerned that the list in HAVA is too restrictive, that it does exclude certain populations -- the disabled, racial and language minorities, even young voters who might not have access to the kinds of identification that are permitted to be used under HAVA. There's one group -- and I'm not saying that they're the only group, but they're the one that comes to mind -- a group based in New York City called Demos. And Demos has been working with other advocacy organizations, and they have a suggested list of permitted IDs which is actually broader than what's in HAVA, with an intent to make sure that individuals who don't have access to the statutory IDs, nevertheless, have access to the polls. So it's settled in a legal sense, in that it's in HAVA. But as a policy matter, no, sir, it is not settled. And there are groups, representatives of which I am sure are sitting behind me right

now, who will argue that the list in the bill is too narrow and that New Jersey, specifically, and Congress, in general, ought to broaden that as part of its revisiting HAVA.

ASSEMBLYMAN PAYNE: Thank you.

ASSEMBLYMAN GUSCIORA: One final question. My understanding under HAVA is that the reason why we supply the Social Security number is that there's going to be some kind of multiple verification. That if someone is out of sync, whether it be on the Social Security or the address or some other document, then their vote would not count or they would instantaneously be ineligible to vote.

MR. CHAPIN: My understanding is that the identification requirement is -- it's supposed to work in tandem with the statewide voter registration database, which doesn't exist in many states right now. But the idea is that name, residence information, plus the last four of Social is sufficient to identify somebody uniquely, so that you can be confident that that person is who they say they are. That you can bounce that off an external database and verify that there really is a Doug Chapin on Abbey Lane in Vienna, Virginia.

The Department of Justice has issued -- they can't give advisory opinions, but they have given guidance letters that aren't official. But they have said to states that if someone gives you a registration application and it's not on there, you shouldn't reject that out of hand. You should give them time to cure it. But if there's not time to cure it because it's close to the election, you should not go to the length of disqualifying them, but that you should then find a way to verify them after the fact.

The other thing that we haven't really discussed here, and I don't want to open up a whole other can of worms, is the provisional ballot, which

is something that voters in every state are supposed to have access -- that if someone is not on the list and believes they should be, they should have access to this provisional ballot, which can also be used, after the fact, to verify their identity before it is actually opened, thrown into the general population, and counted.

ASSEMBLYMAN GUSCIORA: Because my concern would be somebody with a Hispanic surname that is hyphenated or someone who is recently married, which has a different last name on previous birth records or -- and even homeless people would have a hard time qualifying for any of the new identification requirements. Is there anyone dealing with those issues?

MR. CHAPIN: There may be. It may not feel like it to you. That feels like it's a good thing to me that we're now getting to real -- the nut of a lot of these problems. And I talked to a reporter from Ohio who said that they've printed up voter registration applications that asked if someone would be 18 on election day. And they had several people on the advisory committee say, "Well, no, I'm going to be 43 on election day, so I can't check that box." (laughter) So they had lots of older voters who were not checking that box and therefore they couldn't process-- So we're now getting to that level of detail. Now, I don't want to belittle homeless voters, but that's the level of detail that people might have considered in debating HAVA but weren't able to shoehorn into the final text. And that's why you all have the election certificates. And while the advocates sitting behind will argue that-- But I think those are the kinds of next level of implementation that states will be wrestling with, not just in 2004, but 2006 and beyond.

ASSEMBLYMAN GUSCIORA: Thank you very much. That was very informative, and we appreciate you coming up from Washington.

MR. CHAPIN: Thank you.

ASSEMBLYMAN GUSCIORA: Have a good ride down.

I'd like to call up Sandra Matsen from the League of Women Voters of New Jersey.

S A N D R A M A T S E N: Good morning. And I apologize if I'm forced to put my dark glasses back on. I'm having a little trouble focusing this morning.

I'm Sandra Matsen. I'm the Advocacy Coordinator for the League of Women Voters of New Jersey. I have submitted written testimony and will not be reading all of it.

I think the law impacts every part of the voting process. It is not just about buying new machines. The League believes we have an unique opportunity for New Jersey to have a uniform statewide voting system where every citizen's registration and voting experience at the polls will be the same, whether they vote in Sussex County or in Cape May County. I believe advocates and election officials want the same end product, which is a system that is secure but that does not put up barriers to eligible citizens. And we may all not agree on exactly where that balance point is, but I think it is critical that we come to an agreement sooner rather than later.

This is a presidential election year. And although our voter turnout in New Jersey has been pretty abysmal, there's no question that both registration and voter turnout will be at a four-year high this November.

I'm going to just speak briefly about some of the areas covered in HAVA. Although many of the recommendations could be administratively implemented, I think it is clear that in New Jersey an examination of Title 19 makes it clear that our preference is for enacting most changes into law. Perhaps

the only area where that may be less appropriate is in the education requirements that are part of HAVA.

We've heard a lot about voter registration and ID requirements. HAVA requires first-time, mail-in registrants to provide identification. Obviously, our point of disagreement is how you define a mail-in registration. The League believes that the balance point in the bill, as amended by the Governor, is the correct one, and that we should not expand identification beyond a mail-in.

I think the next really big piece is a statewide registration database. I really think this is the spot where we can really address many of the issues we hear raised about fraud. The League, as far back as 1970, supported a State Department of Elections with a statewide voter registration database and, essentially, State control of elections, rather than our county-based system. With HAVA, a statewide database is required. It must be connected to other agency databases, specifically Division of Motor Vehicles -- which I guess has another name now -- Social Security, felon, and death records. And certainly, I am sure, there's someone here from Law and Public Safety who can talk about how that is envisioned. But that database will allow you to compare. It will allow them to both gather information and tie it together, and to know that Sandra Matsen, who says she lives on Sand Hill Road in Annandale, actually does. And it also makes the verifying of the required identification of the new registered voters possible, and it -- also duplicate registrations and the whole issue of, as we like to say, our dead voters still voting.

I think once it's fully implemented, looking further down, and I don't think we'll see this in the next couple of years, it should make moves within the state a matter of change of address, as opposed to having to totally

re-register once you've got all those connections made. If I move and change my driver's license, it ought to update that across the board, as far as voter registration. I also think it will change that if I am a registered voter and move from one county to another within the 29 days, that I'm not disenfranchised, which I am at this point because all registration is county-based. Counties will still maintain their functions as registrars, but it will be with one database, one set of software, as opposed to each individually having their own databases.

I think the voter education and the information is really more than legal notices and a bunch of posters slapped up in the polling place. Those are the legal requirements of HAVA, with some expansion. New Jersey meets most of them, but with some expansion. But we really believe it's incumbent that this State really design a voter outreach program that is multi-lingual, that effectively uses Web sites, that does some public service announcements on cable, radio, local papers. It needs to address new voting machines where appropriate. It needs to address the mechanics of registration and the required identification. It needs to address absentee voting applications and the use of provisional ballots. And of course, long term, our dream has always been that we will have, essentially, a statewide voter information sheet that is sent with sample ballots, as is done in many states.

With voting machines, HAVA requires the replacement of lever and punch card machines. We've heard a lot about the security issues. I think that is something that the legislation, as you further develop it, is going to have to address -- what we think in New Jersey is appropriate security measures.

There's talk in the law about election official and poll worker training. The League does support certification of election officials through a program similar to that used for municipal clerk certification. I was part of the

State Planning Committee for HAVA, and that is really not an issue that either side is opposed to. Most election officials look favorably on developing that type of certification. Poll worker training should be standardized throughout the state using diverse techniques. And we would argue that poll workers should be required to attend training every year. The current law is every two years.

Provisional ballots have been expanded to meet-- New Jersey has had them since the dissent decree four or five years ago, maybe longer. The legislation that was before the last session, and is starting to work again through this session, expands it to meet the ID requirement that you're entitled to a provisional ballot if your ID is deficient the first time you vote. The League believes that the provisional ballot should be more expansive, perhaps more voter-friendly. The law says that if I declare unregistered in the jurisdiction, and you cannot let me vote on the machine because of some deficiency, that I should be given a provisional ballot. And if that ballot is found valid, that if I am who I say I am and live where I say I live, the system should be designed to count all races for which I was eligible to vote.

And we also believe that the affidavit you have to sign on a provisional ballot should also serve as a voter registration form. I don't really see a reason there have to be two steps. If I'm found not to be a registered voter and my provisional ballot will not be counted, there's no reason that that affidavit then shouldn't become my formal request for registration.

There's money for procedures to improve access for persons with disability and also to accommodate multiple languages. And we look forward to seeing those enacted, and they'll really be enacted when the State Division of Elections plays really an active role in monitoring compliance. HAVA does require a significant state role in the administration of elections. And although

you may not want to hear this, the League really believes the capacity of the Division of Elections must be increased. More resources and management expertise must be allocated if the State is to administer New Jersey's elections effectively and in accordance with Federal law.

We think it's a great opportunity for New Jersey to have uniform and nondiscriminatory processes across the state. We fully expect it to be a bumpy several years, but are excited about the positive changes by the time we get to 2006 or 2007.

Thank you.

ASSEMBLYMAN GUSCIORA: Thank you.

Any questions?

Assemblyman.

ASSEMBLYMAN PAYNE: Just a comment.

ASSEMBLYMAN GUSCIORA: Yes.

ASSEMBLYMAN PAYNE: You really touched upon many items here, but election officials and poll worker training -- it seems so elementary that everyone should have that. It's certainly necessary, but I do find that it's lacking in a lot of areas. Many of the poll workers or election workers just simply are not quite aware of all the things that they're supposed to be doing. I certainly endorse that, and certainly hope that we can implement that across the state.

And provisional ballots, the same thing. Many of the poll workers and election officials don't know what they're for and don't know that they can use them, etc., etc. I've seen that time and again, and that's certainly an area, those two areas, that certainly need to be followed up on. They don't require

a great deal, but I think they would have a positive impact on peoples' experiences at the polls when they go to vote.

MS. MATSEN: And I believe are two that really need to be addressed within the next six months, to some extent, and can be done so -- some without legislation.

ASSEMBLYMAN GUSCIORA: Thank you very much, Ms. Matsen. I appreciate your coming out.

Sue Gottesman from the New Jersey Council on Developmental Disabilities.

S U E G O T T E S M A N: Good afternoon. Thank you for allowing me to testify.

I wanted to first thank you for convening this Committee. The Council, as an advocacy group for people with developmental disabilities and their families, really welcomes the opportunity and looks forward to having many dialogues on many issues. I also want to sincerely thank the members. It's a wonderful panel of committee-- All of you have worked on important issues for our community, and we thank you for all your past work.

I won't read my written testimony. I'll try to be uncharacteristically brief today. I just wanted to mention four main concerns we have about HAVA today. One is just to emphasize the importance of the accessibility of polling places. The U.S. General Accounting Office estimated that in 2000, 84 percent of polling places had some potential barriers to people with disabilities to come to vote. In New Jersey, anecdotally, as well as some of the research we're doing through our Election Challenge grants, we are finding that there are many widespread barriers to polling places. Even those that have self-identified as accessible, when individuals with disabilities attempt to utilize a facility, they

often find that a ramp isn't up to standards. It's not wide enough or sturdy enough. Our folks are having trouble getting in the building. It's something that we would like to remain in the forefront of your deliberations as HAVA is considered.

Our concern revolves around four items today. Of course, funding -- we appreciate that you're aware that the Federal funding is not even going to come close to what the State needs to comply with accessibility requirements and other requirements of HAVA. We would encourage our Legislature to be aggressive in pursuing compliance, despite this problem, and urging the Federal Government to fund, and also doing everything that the State can do to qualify for what Federal funds are available.

To this end, also, we would hope that the Division of Elections has an increase in funding and staff so that they can ensure compliance. We want to commend the Division. We greatly appreciate that the Division of Elections established an on-line complaint form for voters with disabilities to alert them if a polling place has presented a problem for them, and they're certainly going to need the staff and the resources to act on those complaints.

Also, the State HAVA implementation plan touched on establishing advisory councils. Very briefly, we would encourage those councils to exist, but also to have members who are people with disabilities, just as we would hope that poll workers and people on election boards are people with disabilities, and that participation expands peoples' understanding of the issues that are faced. Also, with regard to training of poll workers, we've begun conversations with the Division of Elections to involve self-advocates in that process so that the poll workers are aware of accessibility issues.

One very big issue for our office is the question of waivers that are granted to election districts so that they are permitted to hold elections in inaccessible buildings. Presently, there isn't clear criteria and there's no time limit. So a district can continue to hold elections in inaccessible buildings year after year. And we would call for a one-year limit, and we would also hope that the State would adopt ADA standard for accessibility, because they are well established and understood.

Also, in order to help election districts meeting those requirements, we have suggested that the State consider expanding a list of available places where polling can take place -- so that a district isn't limited to schools and other types of buildings that may not be accessible -- to, sort of, help them while we're coming down and asking for enforcement of accessibility; to, sort of, open up the available pool of buildings that they can choose from.

On a final note on voter verification, we are aware that it's a big issue, but most disability advocates are very concerned that this issue of introducing a new element, a new voting system, could take funding and attention away from the reforms that are necessary to ensure that people with disabilities can get into a polling place and have a machine that they can vote on. So that we would certainly recognize the need for further study to ensure that we can have voter verification, but we're very concerned that jumping to amend HAVA at this time and undertake reforms in this direction will hinder the implementation of accessibility. Not many groups have recognized that the wait-- For instance, there's easier ways to do it instead of-- There's ways of having electronic voting that's not connected to the Internet that would protect against hackers and things of that nature.

I thank you again for convening. I look forward to working with you again on education issues. I would hope to have a continuing relationship with the Committee. Please feel free to contact us for other information.

ASSEMBLYMAN GUSCIORA: Thank you, Sue.

A quick question. Could you give us an example of one type of building that you're thinking of that is now prohibited from being included as a voting location?

MS. GOTTESMAN: Sure. I think that sometimes there's limits to public buildings, and if, with proper care, it might be possible to open it up to some private buildings that are accessible, as long as there's protections against the concerns about mixing government and private facilities.

ASSEMBLYMAN GUSCIORA: Thank you.

Questions?

Assemblywoman Greenstein.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Hi, how are you?

MS. GOTTESMAN: Fine, thank you.

ASSEMBLYWOMAN GREENSTEIN: Thanks for coming.

I just wanted to find out -- I think, and I'm not positive of this, but I think that current law does allow people to enter the polls to assist somebody if they need help with the actual machine. Have you heard much about people in the disabled community having problems with that -- being, say, prevented from taking somebody in with them to assist?

MS. GOTTESMAN: I haven't heard about that specifically, and I could certainly look into that and get back to you. I do know that there is a general concern that poll workers often are not aware of the rights and rules that

are flexible to allow people to vote. We have heard a general feedback that there's a concern about the need for greater poll worker sensitivity and information.

ASSEMBLYWOMAN GREENSTEIN: Well, the poll workers have to go through some sort of training--

MS. GOTTESMAN: Yes.

ASSEMBLYWOMAN GREENSTEIN: --and it might be that that aspect of it could be beefed up a bit to improve that.

MS. GOTTESMAN: That would be terrific.

Thank you.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

ASSEMBLYMAN GUSCIORA: Thank you.

Lionel Leach from the NAACP National Voter Fund.

Welcome, Mr. Leach.

LIONEL LEACH: Thank you.

Good afternoon to all. My name is Lionel Leach. I am the Eastern Region Director of the NAACP National Voter Fund, which is a C-4 component of the NAACP. Our main emphasis is voter registration, voter education, and getting people to actually come out and vote on election day.

The Voter Fund was actually set up in 2000, when it was anticipated that it would be the lowest turnout amongst African-Americans in the country. So we set up, actually, 17 different offices; one, specifically, here in New Jersey, where I was the State Director for two years.

I want to briefly talk about three specific areas that are concerns of the Voter Fund of New Jersey and of the Eastern Region. The first point is the proper funding for the Division of Elections. We are still amazed at the

incredible work that the Division of Elections actually do, with the staff of only eight individuals, who basically cover 4.6 million registered voters in New Jersey. We have the opportunity, under HAVA, to help fully fund the staff and open up additional offices, satellite offices, in the northern part of the state, as well as the southern part of the state. And we would hope that that would be implemented and some of the funds would be used to properly fund the Division of Elections.

The next point is voter education. I had the opportunity to be appointed by the Attorney General to sit as one of the committee members for HAVA for New Jersey. It was an enlightening experience to me. One of the reasons that I say that is because before HAVA was actually signed into law, the Voter Fund of New Jersey were actually doing some of the things that we're presently being asked to do under this Federal law. And one is to educate voters about registering to vote and getting out on election day.

One of the concerns that came up during HAVA committee meetings was that the additional cost -- that it would cost, actually -- excuse me -- to fund the voter education process, as far as educating voters that we do have an election coming up, and that their school board election is just as important as our primary or general election. For doing that for, actually, three years, doing the voter education piece and having volunteer attorneys on staff to cover their entire state when people actually had problems at the polls on election day, I can honestly say it's a very minimal cost to actually do that. We actually did the entire State of New Jersey, where we brought the coalition of nonprofit and advocacy groups to help monitor the polls and make sure that every vote was counted. And if somebody had a specific problem on election day, the matter wouldn't be taken care of the next day, but it would be dealt with right there,

on that instant, with volunteer attorneys. The cost was minimal -- below \$25,000 -- to actually do that kind of effort, and we've been doing that for the last three years.

Proper training, actually taking place, of our poll workers -- we were able to implement it. We have been using, the last three years, together with our coalition partners, a New Jersey Voters' Bill of Rights, where we put together 15 main components out of Title 19. We have been able to distribute over 250,000 New Jersey Voters' Bill of Rights that actually, in some instances -- some of the registered voters were more educated than the people that were working at the polls. We need to change that process, and now we have the actual opportunity to do that. We would highly recommend that a lot of that funding also go to that component of it.

The last piece is, and this is the piece that's been most discussed since I've been here today listening, and throughout the entire eastern region, is the voter ID requirement. Within the last four years, actually -- we're going on our fourth year of the Voter Fund of New Jersey. The Voter Fund of New Jersey has been able to register 48,000 new registrants in the State of New Jersey. We've been able to put them on the roles. One of the abilities for us to actually do that is to actually be able to go into our train stations, our bus stations, register people within our project buildings and our inner city, and also high school students, and actually be able to register them. Our voter registration form is one of the simplest in the country, so it takes less than 60 seconds to actually fill out a form. So it made the process actually easier, and we were able to add additional people onto the roles.

One of the most important things, out of that 48,000 that we actually registered, was the 6,000 high school and college students that we've

been able to register, through going to the high schools and also college campuses and registering them that way. The way the bill was written before, before it was vetoed, it would stop and basically prevent organizations, such as the National Voter Fund and New Jersey Citizen Action and other advocacy groups, to actually register people in this way.

What I've been able to see in this personally is, when I go into what was formerly Prince Street Projects in Newark, we might not be able-- If we had the same requirement as far as attaching additional forms to the voter registration form, that would basically say that I would have to carry a portable copy machine with me to actually register these applicants. This law, basically what has been vetoed and what has been introduced -- I know it has been passed on the Senate side -- actually gives us the availability to continue to register folks in that way.

Also, as far as our high school students -- being able to continue to register high schools students who, in 2000, between the age group of 18 to 21, only 10 percent in the country actually participated in the presidential election in 2000.

So our purpose is to increase and be able to give everyone to have the right to vote, and do it in a democratic way -- and when I say democratic, that's with a small *d*, because we're a nonpartisan organization. I wish our two Assembly individuals were still here, basically, because I would like to clarify or would have liked to clarify any misconceptions that they had about the ID requirements.

Thank you.

ASSEMBLYMAN GUSCIORA: Thank you, Mr. Leach.

Any questions?

Assemblyman Payne.

ASSEMBLYMAN PAYNE: Thank you.

I'm sorry. I didn't remember your name. Was it--

MR. LEACH: Lionel Leach.

ASSEMBLYMAN PAYNE: Leach?

MR. LEACH: Yes.

ASSEMBLYMAN PAYNE: Mr. Leach, I'm glad to see that -- and I've seen you a number of times around the State of New Jersey and the Voter Fund of New Jersey. You mentioned coalition partners. I think you -- what are some of the other organizations that are involved with this Voter Fund of New Jersey?

MR. LEACH: Well, the Voter Fund is, like I said, it's a separate C-4 component. But as far as other organizations that have been involved in some of the work that we've done is: the New Jersey State Conference, the 38 branches throughout the state; New Jersey Citizen Action; the League of Women Voters; the AFL-CIO, their nonpartisan constituents part of it; the Black Electorate, which is actually a Washington-based group. We have worked with Demos, and we have worked with People For the American Way, and -- as far as actually informing people of their rights and making sure that every vote is counted.

ASSEMBLYMAN PAYNE: Thank you.

There are often efforts on the part of some people to keep down -- for voter suppression in other words -- in a lot of communities. You mentioned the Prince Street Projects. Actually, they were the Civil Rights projects in the City of Newark.

MR. LEACH: Right.

ASSEMBLYMAN PAYNE: As a matter of fact, years ago when I first became a -- out of college -- I was a social worker, and that entire area was my district. Talk about an overloaded caseload. I had about 1,000 families. They were my caseload at those very projects you're talking about. But suppression -- very often in many communities, there had been efforts to keep the vote down by having squads of people that were -- visit these areas, the low-income areas in particular, to try to intimidate the voters. I forget what they called them, the truth squads or whatever. And in our area, generally, are the Republicans that hired these people to come around. I'm sorry, my Republican colleagues are not here, but it's in the record.

Does that still exist, or have you come across anything like that on certain elections? That there are squads of people -- often they are correction officers or people that are hired -- who come to polling places and -- displaying their weapons, as a matter of fact, to try to intimidate. Does that go on here in New Jersey?

MR. LEACH: Yes, it still continues to a certain extent. It's in certain pockets. However, I can say, throughout traveling through the country and going into different states, New Jersey is one of the better states as far as monitoring and protecting the rights of voters. Over the last couple of years, actually, even last year in one particular county in the northern part of the state, miraculously some letters came to peoples' doorsteps the Saturday before election day saying that you have to bring ID to the polling area; and all different types of intimidation was actually taking place in a very highly, predominantly Hispanic voting district. And basically, it's an intimidation factor, right? I mean, if somebody has an outstanding parking ticket and knows that there's an officer standing in front of the polling booths, how likely are they

going to actually go and cast their vote knowing that there's going to be some officer there that's looking for ID? So that's a different type of intimidation. In some other areas, signs are removed. Street signs are actually removed.

ASSEMBLYMAN PAYNE: How did your group address these? Does your group, or other groups, combat this in any kind of a proactive way?

MR. LEACH: Yes. Actually, we put together, because of 2000 and what happened in Florida, New Jersey -- our Voter Fund Office took-- Since we were the next state after Florida, we wanted to make sure that there's no type of voter problems here in the State of New Jersey. So what we did was, we put together a voter protection coalition. And basically, what we did, like I said, we put together this Voters' Bill of Rights, where we were able to distribute. We did radio ads.

And specifically, in that county that I'm referring to with the large Hispanic population, we were able to work with other coalition partners, and we made over 20,000 phone calls to individuals letting them know that you don't have to bring your ID at that specific location for that. If you have problems on election day, here is our 800 number that you will call if you have a problem. We'll have people dressed in black shirts saying, "You have the right to vote," with the telephone number on the back saying, "Election Protection." They will give you a cell phone. You call this number, and we will have an attorney that would be, basically, Latino, whoever, to actually deal with the problem there.

What happens with elections is, we're always dealing with these problems after the fact. We want it to be a preventive measure -- that we would actually deal with the problems and deal with the issues on the day of, or right there and then. In this past election, this last election in New Jersey, we had a

situation where an individual was not able to cast a vote because the lever machines, of all machines, would not go down for their candidate. Somebody heard our telephone number over the Tom Joyner Show, because we were able to broadcast over Tom Joyner. They called our 800 number. We were able to send an attorney down to that specific polling booth. We actually went to the court, and the case was heard. The judge made the decision that everyone that missed their -- was not able to vote, had to be recalled by the superintendent's office and had to come back and actually vote. So these are the types of things that we've used over the course of the three years.

ASSEMBLYMAN PAYNE: Thank you.

Just one last thing. You said it's a C-4 organization. Is that a branch of the NAACP, or independent of, or what?

MR. LEACH: No. This is an independent. Because of the Federal tax laws, we have to be independent. The C-3 component of the NAACP does the general voter registration piece of it. We also do that component, but we also concentrate on educating the voter on the issues that affect them on their daily lives, basically. So we're able to go a little bit more and educate, then really pull out an emphasis on specific area of voter turnout in low-performing districts.

ASSEMBLYMAN PAYNE: Thank you.

In conclusion, civics was still taught in school like it was a long time ago. Youngsters would know the importance of voting. The very fact that there are thousands of youngsters in our high schools who are eligible to register to vote and don't is an area that is really a failure on our part. They should automatically be taught this, and I would think that they would be a very, very

potent source of new registrants. I hope that we'll be able to encourage more and more of our young people to participate.

Thank you very much.

MR. LEACH: We will continue to do that. And like I said, currently this November election, we'll have 6,000 high school students that will be eligible to vote for this coming election. We do things a little different. We register them. And for those that aren't able to be registered, we have their information. So, when they turn 18, we send them a birthday card, together with a voter registration form. That's how we get them on the roles.

ASSEMBLYMAN GUSCIORA: That actually is a great idea.

I appreciate your coming here, Mr. Leach. I was wondering if you could send us a copy of the Voters' Bill of Rights?

MR. LEACH: Sure.

ASSEMBLYMAN GUSCIORA: Because I think that's an interesting concept; that if we can encourage more people to get access to that or to have that, we'd be well-served. It is troubling that New Jersey is one of the better states that you label, and I fear that the states, such as Virginia, that have gone overboard with requirements for identification -- that could be the new voter intimidation tactics of the new decade. So I think we have to be vigilant against that.

But thank you very much. We appreciate it.

MR. LEACH: Thank you.

ASSEMBLYMAN GUSCIORA: The final person to testify, but not least, Reneé Steinhagen, from New Jersey Appleseed Public Interest and Law Center.

Welcome.

R E N E É S T E I N H A G E N: Thank you very much.

My name is Reneé Steinhagen, and I'm Executive Director of New Jersey Appleseed Public Interest Law Center. We're a legal advocacy organization that tries to work with community, and organizations, and other nonprofits in actually affecting public policy in their state.

Right now, we are in the process of working with a large coalition of organizations that would like to assist this Committee as they start implementing HAVA. And rather than going through particular issues that my predecessors have started to breach with you, I really want to point out one thing that, sort of, overlaid this conversation on registration and the Federal/state relationship. HAVA has some minimum requirements. These are minimum requirements that are trying to put some sort of efficiency and accuracy into our voting machinery. HAVA leaves an inordinate amount of discretion to the states on how they're going to actually implement those mandates. And like any administrative system, how it's actually being implemented, the discretionary part, is where it really lies.

I do not think New Jersey has taken a policy position in terms of registration. I'm using that as an example. HAVA merely requires that first-time registrants by mail must provide ID at some point during the process. New Jersey, like some other states, have decided to narrow what is mail. That is not something that's going to bring the Federal Government down upon us. Some states, because of previous policy decisions, had just used this opportunity to enlarge their registration requirements. It's no relationship.

The one thing that I would like to talk about, which I think is an overlay here -- maybe the gentleman from Washington tried to be very polite about New Jersey being a little bit behind in terms of the HAVA implementation

process. I think we could look at that from an administrative point of view. I came to New Jersey, and the one thing that I've been learning about is: There's always a continuum between the role of local elections and the State. New Jersey is one extreme. I have been told that we are probably the most decentralized system in the country. And because of that decentralization, we really have no State infrastructure. I'd like to point out to you, we are the only state where the Attorney General is the chief election officer.

As a structural matter -- and I don't want to get into the past history on it -- as a structural matter, the Attorney General is not an administrator. The Attorney General is the chief law enforcement agent. At this point, the Attorney General is obligated to enforce and protect the current State laws. That is not an administrative role. And I think something that-- Your Committee, when you're really thinking about how are we going to implement HAVA, has to step back and look at what's the infrastructure in this State to do the implementation. HAVA, now, not just puts mandates on states, it really does require the state itself -- when I say state, I'm not saying to you the secretaries, I'm not saying this -- different divisions or whatever. But the State itself has a role in the election machinery that no State entity in New Jersey currently has.

My other people have been saying that we need to put resources in the Division of Elections. I think before you even start talking about putting resources in the Division of Elections, you have to look at that entity and see, is it equipped? Does it have the expertise? Does it have the authority? Does it have the reputation and power in this state to actually implement the type of things that have to be done? And that's really a bigger role before one starts

going into little things about what HAVA requires and what doesn't. You have to look at, how is our State equipped to do that?

The Law Revision Commission was talking about creating a nonpartisan commission. I'm not endorsing any particular position. All I'm saying to you is that we are the only state that has the Attorney General. The Attorney General is not elected in our state. There's a reason why HAVA hasn't moved in this state. There has been no person that has been held accountable to the citizens, that I am trying to represent, that we want to better and improve our system, because that's just the way our function has been.

Now, so I think that's something that you have to address, whether the Attorney General is the appropriate person as the chief election officer. And even if the answer is yes, the Attorney General then has to be given the resources and the expertise to create an administration system that works. Because the mandates are there, but it's in the administration and the implementation of HAVA that is really where policy is being made.

And that's another reason why we're looking to the Legislature to make a lot of those changes, which in other states are being implemented through administrative regulations. Because they have the administrative agency that's equipped to make those decisions and do those political policy tradeoffs.

So, with that, I do appreciate that we've begun the process here. And I've let you know that there's going to be a wide -- there's a large coalition of civic organizations that are going to have answers, or demands, or on particular issues in how we move forward. And we hope we can work with you in the future.

ASSEMBLYMAN GUSCIORA: Thank you very much. And hopefully, we're accountable to the electorate, so we'll try to get the job done.

Does anyone have any questions? (no response)

Well, thank you very much.

MS. STEINHAGEN: Thank you.

ASSEMBLYMAN GUSCIORA: This, hopefully, has been an informative hearing for all of us, and that we're a little educated.

Assemblyman Gregg.

ASSEMBLYMAN GREGG: Thank you, Mr. Chairman.

I guess this is going to be the close of the session. I have-- Because I believe this was more information, receiving that information, giving, and not dealt with the kind of questions and answers, specifically -- as I hope we get a chance to do if this Committee hears the HAVA legislation. I think some of the folks who testified should be reminded that the Legislature did act and acted completely from a standpoint of passing enabling legislation through both of the Houses, the Assembly and the Senate. That legislation was changed by the Governor and then not accepted by the Senate. So, actually, the enabling legislation could have easily have passed if the Governor had signed it. And then if there were any changes, he could have looked at those changes so we could have started to move forward on some of the things that I think were very important. I think statewide registration adds a type of auditing control that is going to be needed if you're going to act with any of the other pieces of the program, and I think that's important. If all the pieces aren't working at the same time, we will end up having an issue of whether we have the integrity equaling the open door situation.

So I'm looking forward to, and I really hope you do, a good job of leadership, ensuring that that legislation comes here. You have laid the groundwork with the testimony. You've laid the groundwork in educating a number of us. So I hope this group will be the group that begins to implement this as it moves forward.

Thank you for your hospitality, as always, Mr. Chairman.

ASSEMBLYMAN GUSCIORA: Thank you.

I also want to acknowledge our colleague Patrick Diegnan, who came to visit us, or either that or he's lost (laughter).

Thank you very much.

We're adjourned.

(MEETING CONCLUDED)