



WENDY S. NOREN
BOONE COUNTY CLERK
801 E WALNUT RM 236
COLUMBIA, MO. 65201
573-886-4375 FAX 573-886-4300

Testimony to the Election Assistance Commission
Wendy S. Noren, Boone County Clerk
February 2, 2006

Chairman DeGregorio, Commissioners Martinez, Hillman and Davidson:

I want to thank you for the opportunity to provide testimony on the implementation of the Voluntary Voting Systems Guidelines (VVSG) and more importantly for your ongoing commitment to reach out to local election officials for input during your decision making process.

It has been over four years since the drafting of the Help America Vote Act (HAVA) and if any section of that law had consensus support it was the development of a set of national criteria for the manufacture and testing of voting equipment. Few were willing to contend that the unfunded, volunteer-designed standards and testing process in place at that time met the needs of the voter, the election official or the industry. For all of us who worked on election reform, it was envisioned that equipment would be manufactured and tested to a set of comprehensive guidelines prior to the 2006 deadline for meeting the accessibility and second chance voting provisions of HAVA.

That, as we all know, did not happen. The domino effect that followed the early delays in your appointment as a Commission has now left local jurisdictions in the unenviable position of purchasing HAVA compliant equipment without the benefit of your extensive efforts to craft a set of minimum guidelines and design a coherent, reliable testing process.

In addition, the resulting time squeeze forced the 2005 VVSG to be updates to the 2002 Guidelines. They were designed to address the most critical issues such as accessibility, security and state imposed requirements for paper trails. The ink was barely dry on the draft sent to you last May by NIST and the VVSG Technical Committee when they started work on the next version which will tackle a full review of the 2002 guidelines for software, hardware, and usability.

Although these guidelines are voluntary in HAVA, the reality for most local officials is that they are anything but voluntary. As you move toward implementation you are wise to consider the various scenarios that the voluntary guidelines create:

- State legal mandates that require all voting equipment used by local officials be tested to meet the most recent federal guidelines. For these jurisdictions, current equipment will need to be retooled, tested and certified by January, 2008. In most cases, the cost for doing so will fall on local governments already reeling from the failure to fully fund HAVA at the federal and state level.

- In some states, the chief election official independently chooses to incorporate the guidelines prior to certifying equipment for use or purchase in the state. Some may or may not choose to require upgrades to the equipment that is tested only to the 2002 guidelines. Local jurisdictions will remain in compliance limbo subject to the often changing personalities/decisions of state election officials. In addition, some states are requiring additional retooling and testing in reaction to reports of real and/or perceived failures in the current federal guidelines and testing process.

- Jurisdictions who, on the face of it, are not forced by their state to follow the guidelines will end up paying for the some of the ongoing costs of the voluntary guidelines. Vendors who are required to retool and retest equipment will spread the cost of the process throughout the election food chain thereby increasing costs for purchase, upgrades and ongoing maintenance of equipment. Eventually, the vendors who are required to maintain multiple layers of qualified systems that meet various sets of guidelines will have to choose between passing the costs on to all customers, letting their service level suffer or squeezing jurisdictions owning earlier versions of the equipment to upgrade. The costs of equipment manufactured to the ever changing set of state and federal guidelines will force some jurisdictions, in states that allow it, to purchase the cheaper, non-qualified, untested systems.

The turmoil that surrounds a local election official at this point cannot be overemphasized. Little did we know that the simple hope to bring order to the manufacture and testing of voting equipment would spawn the anarchy that has ensued. As I took time the past week reviewing my vast collection of the literature produced the past few years on equipment issues and consulted with both local and state officials, the Bob Seger line "I wish I didn't know now what I didn't know then" kept running through my mind. The volume of conflicting, disturbing, vague, accurate, inaccurate and inequitable data and testing makes it impossible for even the most diligent and informed election official to make a sound judgment on equipment purchase and administration. The ability for local government to plan for the future costs of our operations is at best chaotic.

On the one hand, no issue begs for a greater sense of finality than the issue of equipment standards and certainly that is an argument for you, as members of the Commission, to take a hard line on the implementation date for the 2005 VVSG. But the fact that they are voluntary, as we all wanted, complicates this issue considerably. We must all also recognize that much of the equipment to be utilized in the next 12 months, although tested to 2002 criteria, has never been "field tested" on a large scale. We need only look to the experience of election officials in the early stages of previous equipment rollouts to know that this is critical to identifying the gaps in our guidelines and it will certainly bring to light new areas of concern.

Because of this, the impact of not having a "phase in" period will force some jurisdictions to expend large sums shortly after their initial investment in the equipment. At this point, we don't know which equipment we have purchased will require significant retooling to meet the 2005 VVSG - that won't be determinable until the testing criteria is finalized and the equipment moves through the testing process. The impact of your modifications to the original draft, such as adding additional accessibility requirements for mobility impairments, may add costs to some equipment and not impact others. A "phase in" period will allow election officials to spread costs over a longer period and better plan for these inevitable costs. In addition, a "phase in" may allow an opportunity to upgrade equipment not only to the 2005 VVSG but also to the design elements that are a result of the next version of VVSG criteria, any state-defined criteria above the minimum guidelines, or modifications to fix problems that come to light during the large scale field testing this year. This may afford cost savings to the vendors that they can pass on to users.

On the other hand, one final implementation date will level the playing field among those vendors who are trying to respond to the requirements in a responsible fashion. Additionally, many of the new requirements, as well as access to the testing data, are critical to our ability to effectively develop administrative procedures that insure this equipment works the same way it is tested. The 2005 VVSG provided for the addition of quality assurance and conformance testing as well as access to usability testing provided by the vendor. This will add measurably to our ability to effectively manage the process. A "phase in" period that allows for delays in the development of these may not serve our interests when problems inevitably occur and the finger pointing starts. I would also hope that any "phase in" period is not couched in language that implies jurisdictions must upgrade to these guidelines. Nor can we afford to run the risk, by implying we are delaying the process, of further eroding the confidence of those voters who are already bewildered by the multiple accusations leveled at much of this equipment.

To further complicate the problem, I ask that you be aware that many states and jurisdictions embedded into their equipment purchase contracts the requirement that the successful vendor upgrade, at no cost, to newer versions of the VVSG during the contract period. Any action you take needs to be evaluated with the various states to insure vendors don't have the "wobble room" to not meet those contractual obligations.

In the end, we are all going to have to face the fact that the equipment and underlying administrative procedures and associated costs utilized for American elections are a work in progress, possibly for the next 5 to 7 years. The Commission, state and local election officials, the voters, the vendors and the critics need to accept the realistic probability that, like all emerging systems, we are in for a bumpy ride. Our ability to effectively administer this process and maintain voter confidence will be dependent on all of us working together to find effective, affordable solutions rather than instilling fear to the point that there is pressure to retreat back to the inaccurate, inefficient, non-inclusive systems of the past.

We are going need the analytical input, critical skills, constructive ideas and, most of all, patience of all groups to make the process work. There are those who believe we could have waved a magic wand and created the perfect voting system that every jurisdiction can afford to purchase, administer and maintain in a matter of months. After 28 years conducting elections through several generations of voting systems, I know that is not possible.

I do know that the systems and the administrative processes we use today are exponentially better than when I started in 1978. The systems and processes I will use after implementation of the 2005 VVSG will be better still. If we all commit to the goal of a perfect voting system then we must understand that its evolution will be a result of trial and, let me emphasize this word, error. Reasoned responses, problem identification and innovative solutions to these errors will develop over time.

Despite all of the hysteria that has surrounded this election process the past several years and contrary to my earlier quote from Bob Seger's lament, I am glad I do know now what I didn't know then. With the support and cooperation of all parties, I'm sure the implementation process will add to all of our knowledge and improve the process.

Thank you again for you ongoing efforts to improve the election administration process.