HOUSE COMMITTEE ON ELECTIONS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2008

A REPORT TO THE
HOUSE OF REPRESENTATIVES
81ST TEXAS LEGISLATURE

COMMITTEE CLERK
PATRICK DUDLEY
Committee on Elections
January 12, 2009

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Chairman
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The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Elections of the Eightieth Legislature hereby submits its interim report including recommendations for consideration by the Eighty-First Legislature.

Respectfully submitted,

Leo Berman

Dwayne Bohac
Kirk England
Charlie Howard
Lon Burnam
Rafael Anchia
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Dwayne Bohac
Vice-Chairman

Members: Kirk England, Charlie Howard, Lon Burnam, Rafael Anchia, Joe Farias

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INTRODUCTION

Charge No. 1
Study the general issue of electronic voting technology, including the issues of general benefits and risks, security and accuracy, paper trails, etc.

Charge No. 2
Examine the prevalence of fraud in Texas elections, considering prosecution rates and measures for prevention. Study new laws in other states regarding voter identification, and recommend statutory changes necessary to ensure that only eligible voters can vote in Texas elections. Specifically study the Texas mail-in ballot system, the provisional voting system, and the various processes for purging voter lists of ineligible voters.

Charge No. 3
Monitor the continued implementation of the federal Help America Vote Act of 2002 by the Office of the Secretary of State, specifically including the implementation of The Texas Election Administration Management System to maintain voter registration records, administer elections and execute and report election results.

Charge No. 4
Study poll worker recruitment and training programs and suggest possible statutory improvements.

Charge No. 5
Monitor the continued implementation of the National Voter Registration Act for the new voter precinct pilot program.

Charge No. 6
Study the exemption in the Texas Ethics Commission Act that currently permits certain fees and the non-refundable application fee for public bodies to charge fees or services by a state agency. Consider whether this exemption should be amended or repealed.

Charge No. 7:
Research the current Texas law prohibiting the use of public resources for political advertising, and determine whether the laws need to be amended to clarify that publicly funded e-mail systems may not be used for political communications.

Charge No. 8:
Monitor the agencies and programs under the committee's jurisdiction

ENDNOTES
INTRODUCTION

At the start of the 80th regular legislative session, the honorable Tom Craddick, Speaker of the Texas House of Representatives, appointed seven members to the House Committee on Elections. The honorable Leo Berman was appointed chairman of the Committee. In addition to the chair, membership included: Dwayne Bohac, Vice-Chair, Kirk England, CBO, Charlie Howard, Lon Burnam, Rafael Anchia, and Joe Farias.

Following the completion of the 80th legislative session Speaker Craddick assigned the committee eight charges. The full committee met on four different occasions to hear five of the eight charges. Committee staff met with both the Ethics Commission and the Secretary of State's Office to fulfill the obligation of all three monitoring charges, while keeping the committee up to date.

The committee would like to offer its deepest thanks to the entire Elections Division of the Secretary of States Office. Next, the committee extends its gratitude to David Reisman, Director; Natalia Ashley, General Counsel; and the legislative staff working in the Texas Ethics Commission.

Last, but not least the committee would especially like to thank all of the County Election Officials, administrative assistants, election workers, and the many people who notified before the committee.
Charge No. 1

Study the general issue of electronic voting technology, including the issues of general benefits and risks, security and accuracy, paper trails, etc.

Background:

Where did the current voting process originate from? Many probably do not stop to think about the rich history encompassing today’s voting methods, the technology used, or the everyday vocabulary society uses referencing elections. Many Americans take for granted the current process and idea of a secret ballot. It is generally assumed voting by secret ballot has existed since the birth of the United States. Despite what is thought, the way Americans have cast their ballots has changed many times throughout the course of 200 years.

Today there are questions and some skepticism among some Americans in regards to current voting methods. Electronic voting machines, within the last 6 years, have taken over at polling places. Questions regarding the security, accuracy, and reliability of these machines enter into the minds of concerned citizens across the country, but are Direct Recording Electronic voting machines (DRE’s) really a new idea or are they a thing from the past? Looking at history, one finds these questions and concerns are not new and have been asked with the advent of each new voting method. This does not mean questions of concern have no validity, in fact quite the opposite. All concerns should be looked at carefully. However, before one delves into the problems of today and tomorrow, it is important to look into the past, only then can one have a true and balanced understanding of what may come and what needs to be altered.

In ancient Rome, citizens would cast white or black “ballottas” in an urn, meaning a vote of affirmation or refutation, respectively. The number of white or black “ballottas” would determine who the winner of an election was. The term “ballotta” is the root for the modern word “ballot” and is the Italian word for small ball. This is also where the term “blackballed” originated and today is used to describe rejection or loss of an election. This term having come from when a candidate received a majority of black “ballottas” in their urn, losing the race.¹

The first actual use of paper ballots to conduct an election appears to have been in 139 B.C., and the first use of paper ballots in what is now the United States was in 1629 to select a pastor for the Salem Church.² However, before the late 1800’s there was no secret ballot, and campaigning at the polling place was a common and legal practice. Early paper ballots, if used by states, were no more than slips of paper provided by the voters themselves. As time went on, political parties or candidates provided preprinted ballots. These ballots made it very difficult for one to have the right to a private vote. In addition, it created difficulties in keeping voters from putting a number of ballots in the ballot box.
Parties themselves became adept at printing the ballots in such a way that any voter could easily distinguish the ballots from one party or the other. Still, not all states used paper ballots; Missouri, for instance, used the practice of voice voting until 1863. The voice vote provided only modest protection of a contest. There was no ballot box to stuff, however the lack of privacy meant voters were open to bribery and intimidation.³

Despite serious problems with the partisan form of voting, these paper ballots remained the rule until the late 1800's.⁴ It wasn’t until 1888 that the Australian Secret Ballot (the ballot Americans know today) was brought to and used in the United States. The Australian Secret Ballot was designed in Victoria, Australia in response to the concern of voter fraud and voter privacy in Australia. In 1858 an election was held using a standardized secret ballot, printed at the expense of the Australian government, listing all candidates for office. These ballots were distributed to the voters at the polling place, one per voter.⁵

The Australian Secret Ballot was first used in New York and Massachusetts in 1888, but the move to the Australian Secret Ballot was slow in the United States. Texas and Connecticut moved by gradual reform from the partisan ballot and did not complete changes until 1905 and 1906. Missouri experimented with the Australian Secret Ballot, but went back to the partisan ballot until 1921. New Mexico did not fully adopt the new balloting method until 1927. North Carolina only required that all counties use the Australian ballot in 1929. By 1940, Delaware still used a mixed system where partisan ballots were still allowed outside the polling place, and while size, color, and typography were strictly regulated, South Carolina still used partisan ballots. The weakness easily found within the Australian ballot system was the subjective interpretation of each mark when ballots were counted. If administered properly, this ballot does make it difficult to cast multiple ballots, however, dishonest election officials can manipulate the counting process.⁶

Throughout the accession of the Australian Secret Ballot (and even before), innovators sought ways to perfect a fair, infallible, yet simple way to vote and to tally votes by machine. In fact, many of the more recent voting methods received an earlier start than some may think.

Direct Recording Election voting machines (DRE’s) have an old history. The first proposals for electrical vote recording date back to the mid-1800s. Albert Henderson patented an electrochemical vote recorder for legislative roll-call votes (U.S. Patent 7,521) in 1850. Legislators could vote by holding down an aye or nay telegraph key on their desk and it would remotely print their name in either the aye or nay column on a piece of damp blotter paper kept as the official vote record. Thomas A. Edison refined this idea in his 1869 patent by adding electrochemical counters to count the votes. In 1898 Frank S. Wood proposed a push button paperless electrical voting machine for use in polling places (U.S. Patent 616,174). It wasn’t until 1975 that the machine commercially known as the “Video Voter” was used in real elections in Streamwood and
Woodstock, Illinois.⁷

Lever machines were on the cutting edge of technology in the 1890’s, and were considered the high tech solution for running an honest election as computer-tabulated punch cards would be in the 1960’s. Although lever machines were first used in 1888, the Myers Automatic Booth lever machines were first used in 1892 in Lockport, New York. After this use, lever machines were slowly adopted throughout the country. By the 1930’s essentially all of the nation’s larger urban centers had adopted lever voting machines.⁸

Optical Scanners has its roots in standardized testing. The Type 805 Test Scoring Machine was introduced in 1937 by IBM and performed by sensing graphite pencil marks on paper by their electrical conductivity. These devices were the first generation of machine scored educational tests. The optical scan was developed as an alternative to the electrical sensing system and was first used in the mid-1950’s. The first use of mark-sensed ballots was in 1962 in Kern City, California and was developed by the Norden Division of United Aircraft and the city of Los Angeles. Development of the 15,000 pound system began in 1958 and saw over a decade of use in Orange County California, and was also utilized in Oregon, Ohio, and North Carolina.⁹

There have been many changes since the days of partisan printed ballots and the “cutting edge” lever machines. With the advent of the Help America Vote Act (HAVA), electronic voting machines are utilized by U.S. citizens in every election. Currently, explicit state and federal standards have been established to preserve the secrecy of the ballot, ensure electronic voting machines operate safely, efficiently, and accurately and verify the methods are safe from fraudulent or unauthorized manipulation. Methods such as certification processes, examiners assessing voting machines, different levels of testing, required standards met by manufacturers, and standards and processes county governments must go through when machines are purchased and are set up at the polls are all established to ensure accurate counting of ballots cast. This does not mean these methods are flawless or that they can not be manipulated. There are a number of citizens that distrust the use of electronic voting. Individual concerns lie with the lack of a voter verified paper trail, the possibilities of an internal or external hack which could be executed on one or multiple machines, and the lack of accuracy the machines might have.

Some believe a Voter Verified Paper Audit Trail (VVPAT) is the solution to creating confidence and more secure elections. However, recently it has been discovered the VVPAT may not be the ultimate solution, but potentially will be a waste of government dollars and offers a false sense of security.

Charge No. 1 covers the general aspects of electronic voting. In addition, the charge looks in depth at the use of VVPATs and determines whether or not these forms of paper trails are a good solution for the State of Texas. Once these issues have been covered within the report, the committee will make recommendations to the 81st Legislature on what it believes the best course of action should be.
Security, Accuracy, Benefits and Risks:

History has shown with every voting method comes risks of fraudulent behavior. Electronic voting technology is no different. Are these risks mitigated by the security procedures and certification processes established by federal and state governments? The committee took testimony from the United States Election Assistance Commission (EAC), the Texas Secretary of State's Office (SOS), manufacturers, advocacy groups, computer scientists, and county election officials who use electronic voting technology. The testimony was taken in order to learn exactly how an electronic voting machine is certified, the security procedures and measures taken, and the benefits and risks encompassing the technology.

Matthew Masterson, Testing Certification Analyst from the EAC, testified on the current federal certification program developed and being evaluated. The Help America Vote Act (HAVA) established the EAC and gave it three tasks. The first was the responsibility to distribute and manage $3 billion in funds set aside for states to purchase voting equipment. The second task was to create and adopt the Voluntary Voting System Guidelines (VVSG) used by non-federal independent testing authorities in assessing and certifying voting systems. Finally, the commission was to accredit voting system test labs and to certify and decertify voting equipment. This was the first time the federal government has been responsible for certifying, decertifying, and testing voting equipment. Before the EAC was commissioned with this responsibility, the National Association of State Election Directors (NASED), a non-profit organization made up of State Election Directors across the United States, certified and decertified voting equipment. Of significance to note, state participation in the EAC program is voluntary, so states may use as little or as much of the program as deemed necessary.

Masterson said the EAC is currently in the process of creating a new set of VVSG, which are being modified to be more user friendly, accommodate the next generation of voting systems, to promote innovation and is a total rewrite of the previous 2005 VVSG. In 2007, the EAC was commissioned to create a testing and certification program independently verifying voting systems in compliance with the necessary requirements established in the VVSGs. Manufacturers became active in complying with HAVA once test labs were accredited under the EAC and submitted voting systems to be tested under the new certification process.

Currently, there are 11 manufacturers registered with the EAC program and 9 machines have been submitted for testing; the first system was submitted in February 2007. To date, as of this hearing, none have been certified. When questioned about the validity of the voting machine certifications in use today, Masterson gave detailed information to the committee. There are different regulations within each state determining which machines are certified to be used. Masterson assured the committee, voting machines currently in use have been certified by NASED.
The EAC does have a quality assurance program in its guidelines, so a state will know individual voting machines have been certified under the program. Additionally, the commission provides a quality monitoring program allowing for investigations on voting equipment when a member of the public brings evidence against a voting system’s validity. However, since there have not been any EAC certified voting machines, there have been no investigations. Because this is a voluntary program, the EAC can only regulate those machines registered. Consequently, if a member of the public provides the EAC with evidence of a possible non compliant machine, the commission does not have jurisdiction to investigate said allegations if the machine in question is not registered with the program.

There were questions among committee members of when the first voting machine would be EAC certified. Masterson assured the committee the commission is actively working with vendors and testing labs to get a system out in an efficient manner; however the EAC was not going to compromise the quality of the testing for the need of expediency.

There have been five voting system testing labs accredited by the EAC. These labs are initially reviewed by the National Institute of Standards and Technology (NIST) through its National Voluntary Laboratory Accreditation Program (NVLAP) and then provides a recommendation to the EAC on laboratory accreditation. To date Wyle Laboratories, Info Guard Labs, iBeta Quality Assurance, Systest Labs, and the newest addition of accredited labs CIBER, Inc. have all been successfully accredited voting system laboratories under the commission's Voting System Certification and Testing program.10

Systest Labs has been providing Independent Software Test Engineering and Quality Assurance since 1996 and has its roots in testing and verification of technology rich complex systems developed by the Department of Defense. It was one of the first Companies accredited by NIST under NVLAP and sponsored by the EAC as a Voting System Test Lab (VSTL). Before it was accredited by the EAC, Systest Labs was accredited by NASNED and is currently engaged in or has numerous consulting and certification projects directly for Secretaries of States, Attorney Generals, and/or County Election Directors and Officials, which are separate from work performed for the EAC. Representatives from Systest Labs testified before the committee regarding the process manufacturers must go through to receive certification.

Many tasks go into electronic voting system risk reduction. Each project starts by determining the scope of the project or how much testing is needed to qualify, certify, or accept a voting machine. The manufacturer seeking certification submits a Total Data Package (TDA) including detailed documentation, source codes, and hardware specifications of the products being tested. After a review of completeness, detailed test planning is performed. A Physical Configuration Audit (PCA) is performed on the product to test for any discrepancies between documentation, source codes, physical configuration, and the manufacturer’s prior testing results. All discrepancies are reported to the manufacturers for resolution and reexamination.
All hardware, software, and firmware are tested during the Functional Configuration Audit in environmental chambers and test labs to make sure all standards are met. This is followed by security testing directed at the effectiveness of physical and electronic controls employed to protect critical voting system elements. Penetration vulnerabilities of network and internal origin are also tested and verified.

The committee was informed the thorough testing performed resulted in identified discrepancies within most voting systems. These discrepancies are sent to the manufacturers to be analyzed, corrected, and retested. As test programs progress additional discrepancies will continue to be found only to be fixed and retested for the benefit of the public. The representatives at Systest believe this is a solid test program helping reduce risk and improve product security and accuracy. These tests are taken seriously with the manufacturers. As Peter Lichtenheld of Hart Intercivic said, "It is like taking a test; you don't take the test until you are prepared. Our machines go through internal testing then to an independent test lab, and then it goes on for the real test for review before the Federal process. We want them to work."

*The committee would like to note that on October 29, 2008 the EAC notified Systest Laboratories Inc. with intent to suspend its accreditation as an EAC certified test lab. This decision was based on an earlier suspension of accreditation by NIST. The suspension came after an on site review conducted by NVLAP with EAC and NIST representatives present discovered non-conformities with accreditation regulations. Non-conformities included failure to create and validate test methods, improper documentation of testing and unqualified personnel. The EAC requires that all test labs must hold a valid accreditation from NIST/NVLAP.11

Systest responded to the EAC within its three day deadline to refute the NIST suspension. A letter to the EAC from Systest Labs. Inc. Vice-President of Compliance Services, Mark Phillips, indicated that all staff conducting voting system testing are degreed and experienced testing professionals who have passed Systest's audited and approved internal training and testing curriculum. Systest believed during the stressful conditions imposed by close observation, which included questioning and interviewing by up to eight NVLAP representatives, some of their staff may have not provided complete responses but does not believe this constitutes a reason to suspend accreditation.

In regards to the validation of testing methods Systest Labs argued while NIST required observation of actual testing of a voting system, the only testing available that day were initial trial tests being run for the first time. Due to the newness of these tests faults were uncovered. Systest agreed with recommendations given by NIST and submitted a package to NVLAP outlining the procedural changes Systest plans to make in response to the recommendations. Discussion revealed the requirements for testing methods and readiness testing have been interpreted differently even between NVLAP members. Systest also asked if there was a more effective or clearer test method documentation and validation process. NVLAP representatives' response to this question was other labs have had issues in this area as well. Based on their constructive response and ability to rapidly
remedy this area, Systest believes suspension of their accreditation was not warranted.

Systest Laboratories Inc. was suspended the day Mark Phillip's letter was received by the EAC and is not allowed to perform any testing on voting machines for the EAC until the situation is remedied. Under EAC rule Systest Labs. may request an opportunity to cure its non-compliance issues within 20 days of suspension. Committee staff spoke with Vice President of Compliance Services, Mark Phillips, on November 12, 2008 to receive updated information on the subject. Mr. Phillips assured the committee this was a minor set back. He stated Systest is currently executing a cure plan in concert with NVLAP and will rectify all identified areas by Dec 8th. The next step will be for NIST and the EAC to verify that they have actually made these changes. Systest Labs is asking they do this not later than Dec 15th.*

Once these systems are certified federally they must then become certified through the State of Texas before being put on the market. The Secretary of State (SOS) requires new systems and modifications to previously-certified systems to be qualified by the EAC with the 2002 version of the VVSG or newer. The Texas Election Code requires all voting systems be approved by the SOS before any electronic voting machine is used in any election. Texas uses three major manufacturers to supply its voting needs: Premier Election Solutions (formerly Diebold), Elections Systems and Software (ES&S), and Austin based Hart InterCivic. As heard from the manufactures Hart Intercivic serves 104 counties within the state with a total of 30,000 pieces of voting equipment, ES&S does business with 183 election entities including 146 county jurisdictions for a total of 11,000 pieces of voting equipment, while Premier services 7 counties. All of these machines must not only go through the federal process of certification, but the state process of certification in order to make it to any polling place.

Former General Counsel to the SOS, Jay Dyer, explained to the committee the process the SOS uses to certify these electronic voting machines. He also informed the committee on the follow up procedures in place keeping these machines secure once they are deployed. Before a machine is even is considered by the SOS it must demonstrate it can essentially pass the tests of two outside entities, independent testing authorities, and the EAC guidelines. If it does not meet the seals of approval by any one of these entities it does not come through. Once the machines are received by the SOS they are reviewed by six examiners, three appointed by the Attorney General’s office and three appointed by the SOS. These examiners review the systems to make sure they comply with the statutory requirements set out in Chapter 122 of the Texas Election Code.

After the review each examiner files a report with recommendations on whether or not a system should be certified, which may be publically viewed on the SOS website. Once the reports are submitted the SOS holds public hearings and takes public testimony. (Each testing date and public hearing date may also be accessed by the public through the SOS website). After all information is considered the SOS will make a determination of whether or not the system should be certified. What will occasionally happen is voting machines will be conditionally certified meaning if a concern has been raised with a
machine, the SOS will only certify it if the concerns brought up are resolved. If those concerns have not been resolved then that machine is not certified.

Mr. Dyer pointed out to the committee after a machine is certified it only means it has met statutory requirements. What it does not mean is the voting machine standing alone has a 0% chance of having any kind of problem under any circumstances. The security of the voting method is not in the machine alone, but in the entire process making up the voting method.

What is done to minimize those risks of having a machine's security breached has a multifaceted answer the SOS believes is training and awareness. The SOS spends significant amounts of energy in training county election officials the ins and outs of these voting systems and assists them with security plans. Staff within the SOS is constantly thinking of "what if" scenarios that could happen within an election, so those possible "what-ifs" may be mitigated before they occur.

The SOS has developed best practices or a series of advisories for all county election officials in regards to the security procedures running an election. Mr. Dyer made an important observation, "To say that you have an SOS certified system and I don't have to be careful or worry about any other process, I think would reveal a serious level of misguidance on what it took to run a safe and secure election. To say we can completely eliminate the risks with this medium by using another medium would also be misguided, because whatever medium you are using you have to surround it with processes, seals, tapes, security, whatever, because you are dealing with a human endeavor. You minimize the risks of human error whether deliberate or accidental."

It was the view of the SOS if the right protocols, structure, and training are in place; the electronic voting method is more accurate because it does remove the human factor in the counting process. The SOS did warn the committee that if or when the legislature decides to lay out standards for electronic voting machines, that it is mindful of current processes at the time and is careful not to adopt a standard applying to a machine not yet created.

Throughout the hearing the issue of the time it takes to certify these machines was brought up, not only by manufacturers, but by election officials as well. David Beirne, Executive Director of Election Technology Council (ETC), spoke on this issue. The ETC is a 501 (c) 6 trade company whose membership represents over 90% of the voting technology in the market place today. His testimony illustrated one example of the challenges manufacturers must deal with. He said earlier in the United States Session, Congress was proposing a bill which would have legislated technology not even in existence at the time and would not have been for the anticipated deadline. The entire life cycle for new development of an electronic voting system is 54 months. New product certification lasts alone up to 12 months, with an additional period for state certification.

Mr. Beirne stated the federal certification process still has not yielded a single
certification, but has increased cost by 300%. The challenge with certification is it directly affects the industry's ability to respond quickly to the growing and changing customer demands. Many increased costs regarding the certification process affects the entire industry. Manufacturers must recoup certification costs in some way, and more than likely do so at a county level. Dallas County's manufacturer took one and a half years to become certified for a version of the software which is now two versions old. Bruce Sherbet (Dallas County Elections Administrator) believed the counties could receive newer and better software if the certification process was completed quicker.

Once a machine is certified it is up to the counties to decide which manufactures they would like to purchase from and which machines they wish to purchase. After those machines are purchased another level of security procedures are put in effect. Dana Debeauvoir (Travis County Clerk) expressed her sincerity when she said to the committee, "Virtually all of us take the viewpoint that the only way we can sleep at night and say to our voters yes I'm certain that your vote is being counted correctly and say that to them and mean it is if you do extensive testing." Dana took the committee through the security process counties implement when handling the machines.

Before elections are even considered and machines are bought, all county election officials must perform acceptance testing from manufactures before a county claims a product. Acceptance testing is done so counties may verify the product they are receiving is legitimate and all components within that system are performing to their required specifications. This testing is not done just once when machines are bought, but also when upgrades are in progress. All testing information is then retained on record.

After purchasing the machines every county goes through security procedures in order to properly carry out an election. The basic testing all counties are required to perform under state law is Logic and Accuracy Testing (L&A testing). This form of testing is done manually and is recommended to be done as much as possible. If a mistake is made during L&A testing the county must start over and repeat the process.

After all candidates are set up in the proper precincts etc. and are in a spreadsheet a known stack of data is entered into the machines covering all possibilities of blank votes, over votes, under votes etc. Once the machine goes through all of the data, the results taken from the machine is compared to the data entered. This testing verifies all candidates are in the proper place on the ballots and everything is in the correct precinct.

The second kind of testing recommended, but not required is hash code testing. This test compares programs being used by the county to those programs on file with the SOS and at the NIST library. Hash code testing assures the software county election officials are using is the correct software and assures it has had nothing added or subtracted from the program.

A third form of testing catching on is parallel testing. This form of testing is more expensive, time consuming, and tedious so it is not done within all counties. Parallel
testing deceives the voting system into thinking it is in a real voting environment and not a test environment. Ms. Debeauvoir explained if anything has been planted in a machine and has not been found by previous testing methods it will show up during this test.

To perform parallel monitoring, machines are pulled out randomly from a precinct and are set up in a secure room, preferably under surveillance. Throughout the day, as done in Travis County, staff is asked to enter "votes" from a test deck into the system as if it were Election Day. At the end of the day the results are tabulated and taken from the machine and then compared with the test deck. This technique allows the machines to be used as if it were Election Day uncovering any possible "hacks" that could have been imbedded into the software. This not only proves the correct software is being used, but proves the voting machine has performed as it would have in the field.

Currently L&A testing is the only required testing in the State of Texas, while both hash code testing and parallel testing are only recommended. What can be done in Travis or Dallas County may not be able to be done in smaller counties due to lack of resources. Ms. Debeauvoir said all test processes are necessary and if all are done properly she believes the confidence level in machines could be 95%. Bruce Sherbet, with the support of other county officials, believed it would be wise when talking about parallel testing and hash code testing that the state had a standardized system in place for all counties, and finds it troubling Dallas County might be doing it different than Tarrant County, who may be doing it differently than Bexar. Standardizing the system would benefit the counties as well as the state so when advocacy groups ask what is being done, the answer among the counties will be the same. Sharon Rowe, of Collin County, explained she would like to go to parallel testing, but said party chairs in her county have told her they are not interested in parallel testing and do not believe it is necessary.

Testing is not the only form of security procedures done on a county level. Ms. Debeauvoir gave the committee a handout on the security procedures Travis County goes through. New, enhanced, or continued security practices in Travis County are:

- Provide public invitation to attend all programming and testing activities
- Maintain written procedures and initialed tracking sheets
- Maintain independence from vendors
- Recruit, screen, and train skilled and trusted employees
- Coordinate emergency management plans with other relevant agencies
- Use Sheriff and Constable Officers to secure early voting electronic ballot boxes
- Improve security for the building where election activities occur
- Implement employee procedures that lower risk
- Conduct extensive pre-purchase testing of new equipment or software
- Provide continuous functionality testing of equipment
- Conduct Hash Code Testing on software
- Perform High Volume Testing of ballot programming
- Perform Parallel Testing
- Conduct Early Voting and Election Day audits by matching counts of voters by
location as reported by the electronic voting system to the number of names on
signature rosters
• Conduct post-election verification using the three redundant electronic sources,
paper results printed from the electronic ballot boxes, and precinct-by-precinct
election results

All election officials agreed all voting systems have risks whether someone is voting by
machine or by paper ballot and these systems are parts of a larger process. The security
measures are not just in one step, but in many steps. It was pointed out by the election
officials with the passing of time and with the experience and knowledge they have
gained the less dependent on the manufactures they have become. These officials take
extra precautions they feel are necessary so elections may be run in a safe and secure
manner.

County election officials have developed risk assessment models or lists of real risk
scenarios threatening elections and then develop lists of ways to prevent, mitigate, or
recover from those risks. Counties throughout the state go to extra lengths to protect
their elections. Galveston County conducts a minimum of three L&A tests and invites the
public to attend these tests. They also do not use a vendor to program ballots. Even
printing and tabulating ballots are all done within Galveston County.

According to Steve Raborn (Tarrant County Election Administrator) Tarrant County is
taking more and more security precautions on their own accord. They have added
physical security in their own buildings, controlling access, increasing the changing of
custody procedures, and have improved the inventory system so they can tell at any
moment where a machine is located. Sharon Rowe, Collin County Election
Administrator, testified that all coding is done in house and everything is managed on a
county level. She said Collin County has security logs on everyone who enters the
polling place who is not a voter.

Another security measure in place through the SOS is the mandatory partial recount done
after each major election. As Elizabeth Hanshaw-Winn, the Director of the SOS
Elections Legal Division stated the SOS does not reveal to the precincts or counties who
will be chosen to be audited, leaving the process very secretive. This audit has been done
for a number of years and was put in place during the eighties. The SOS uses the paper
audit trails all machines are required to have under HAVA. HAVA prescribes in code all
systems being used in an election must have a permanent paper record for the purpose of
a manual audit.12

Dana Debeauvoir proposed a system akin to the one implemented in Georgia that would
support all counties and allow, among many things, all methods of testing within every
county, small and large. Individually, it is almost impossible to implement all procedures
and tests because of funding, but through a Texas Election Center she believes it could be
accomplished. The Election Center would be a clearing house for all election officials. It
would perform research, train staff and volunteers, train and employ trouble shooters for
voting equipment, assist with ballot design, provide parallel testing (along with other forms of testing), and address many other issues. For example, if Texas wanted to parallel test voting equipment across the state, they would have the opportunity to do so through the center. This center could be housed or run by one of Texas's own universities and would be funded by the state.

Manufacturers testifying before the committee agreed with county election officials. David Beirne of ETC stressed the integrity of all elections comes down to a balance of prevention versus detection. The ETC, in an effort to assist election officials with providing security measures released "Safe Guarding the Vote" a document outlining the various procedures that can be incorporated by state and local election officials for the 2008 Election. Mr. Beirne referred back to a statement made in a report done by the Government Accountability Office on a contested United States Congressional Election in Sarasota County Florida; election integrity comes down to a system of people, process, and technology. Mr. Beirne and the manufacturers he represents believe the Texas Legislature and the SOS should use these three components as a guide when assessing the election integrity and reliability of voting technology in Texas.

What happens, Mr. Beirne pointed out, is the complex mixture of personnel, procedures, and technology can result in straightforward human errors and when this happens unfortunately the media inaccurately and automatically attributes these errors to technology.

Edward Perez is the Manager of Election Services for Hart InterCivic. He has worked in the public sector for six years as a professor, worked in the Texas House, has been a trainer in the field, has been in the trenches, and has personal knowledge of the dedication that counties put into their elections. Mr. Perez testified that some trouble the industry does have is putting their hands around standards and being able to get through a certification process that is not so costly. The issue is developing a product which does not price them out of the market and can still move fast enough the machines can actually serve their customers.

An issue vendors must overcome is the mosaic of standards in place across the nation, because every state's standards are different. The important issue which must be weighed by the vendors according to Mr. Perez is security, usability and cost. This combination makes it very complex to fulfill. A vendor does not want to make a machine so secure it is unusable or unaffordable, but they do not want to make a machine so affordable and so usable it is completely unsecure. Vendors want to develop a product hitting all three marks: security, usability, and affordability. Mr. Perez stated, "There is a valid and significant citizen concern about the vote, which absolutely needs to be addressed. The absence of information means the absence of innovation and serving our customers, and addressing those concerns is also hampered because we don't have clear standards."

Hart Intercivic representatives shared with the committee the issues they see with their customers during election events and described the most common issues they see with
voting systems today along with solutions to these issues.

These issues are:

• Public perception that the process is not transparent - This can be resolved by opening up our elections offices and their processes to the public. Let those who are interested watch as ballots are laid out, equipment is prepared, and votes are counted. Hart can also do things, as a voting system provider, to be more transparent and we are working on those solutions. Currently, we routinely escrow our voting system code with State and Federal authorities, so we do have a form of disclosed source code in place.

• Issuing an incorrect ballot style to a voter – This human error has been the bane of elections for many years, especially in complex jurisdictions, no matter what the voting method. To avoid this error in Travis County, for example, poll workers repeat the precinct number as displayed on the voter record and again on the Access Code when handing the Access Code to the voter; Harris County poll workers write the precinct number on a slip of paper and compare it to the printed Access Code; during Early Voting Tarrant and Montgomery counties use an electronic poll book to print the precinct number to a bar code and scan the bar code to generate the voter Access Code (thus avoiding human error).

• Inadequate electrical supply at a polling place in combination with weak batteries or no batteries installed – Jurisdictions should test electrical outlets when qualifying polling places for use and use battery back up and/or Uninterruptable Power Supplies wherever possible.

• User training-related errors – Often jurisdiction staffs are too busy and/or have too little county funding to pay for new employee or review training. Because they don’t run elections everyday, the forgetfulness curve kicks in. Of course, the same is true of poll workers. Poll worker training needs to be hands-on, taught by staff members who know what they are talking about and reinforced with practice as well as clear and consistent documentation. Poll workers have a LOT of responsibilities on Election Day, and they deserve excellent hands-on training and support.

After security the next issue most commonly brought up is the accuracy and trustworthiness of voting equipment. Are they accurate? Can the public trust the equipment? Testimony from all county election officials assured the committee they would not be able to stand behind the machines they use if they did not think they were accurate, secure, and trustworthy.

Steve Raborn believes the systems Tarrant County offers are secure, trustworthy and accurate and thinks the 41% turnout rate during the 2008 Primary Election speaks for itself. Bruce Sherbet has been an Election Administrator for 21 years. In that time he has
seen Dallas go from lever machine to punch card, to pc based punch card, and then in 1998 to optical scan with punch screen. He believes through electronic voting the state has taken 3, 4, or 5 steps forward and the State of Texas is much better off with the technology. He added this did not mean the technology did not need to be improved upon, but it is better than what Texas has had in the past. Mr. Sherbet stated the most inaccurate form of counting method he has seen is the hand counted paper ballot.

Joy Streeter (Comal County Clerk) spoke on the accuracy of electronic voting machines vs. paper ballots, "If you give me 999 votes being counted out to 9 people making hash marks, I will give you 999 different tallies maybe 4 or 5 times". As Ms. Streeter pointed out once poll workers arrive at 4:00 a.m. at the polling place, work through out the day, by nine p.m. they are brain dead. This human element is what county election officials agreed to be what causes the most errors in elections.

In fact what concerns Steve Raborn is the call to move to hand counted paper ballots. Mr. Raborn, who has had 25 years of experience, can not think of a method that has the potential for causing problems than the hand counted paper ballot. The error rate he believes would exceed what is found in electronic voting. Allison Harbison (Shelby County Clerk) stated she has had a recount nearly each election since HAVA and none of them have ever changed the outcome of a race. Galveston County Election Coordinator, Douglas Godinich, believed with the 36 or 50 different ballot styles being used it would not be possible to go back to paper. The simple logistics of conducting elections in this day and age he explained would not make it possible. He also informed the committee he does not believe Galveston County would have been able to produce the kind of turnout if not for the machines they use in conjunction with the paper ballots.

Other benefits shared by county election officials were the efficiency of counting ballots and being able to provide easier access to the disabled population. More access for the disabled was an important benefit brought up during the hearing. Bryson Smith, who represents Adaptive Texas and is disabled himself, shared his testimony with the committee. He believes with the advent of the DRE he has been able to vote much easier and more privately as compared to the past. Machines, he believes, has helped voter turn out within the disabled community.

Dennis Borel, the Executive Director of the Coalition of Texans with Disabilities (CTD), agrees with Bryson. Since HAVA was adopted the CTD has been working with the SOS, presenting at election law seminars and conducting surveys to the disabled. As Mr. Borel pointed out Texas has a history of the disabled community not participating in its elections and should focus on the disabled. He stated in 2003 there were 3.2 million disabled people in the State of Texas. Not all required assessable voting machines, but with the voting age getting older the number is only going to rise. Both Mr. Smith and Mr. Borel agreed the use of voting machines has given the disabled a much more private voting experience than what was available before.

Mr. Borel was part of a focus group dealing with the disabled communities' involvement
with elections and said the question amongst the disabled that got the most attention was:
How much do you value the private ballot? A secret ballot was very important to all who
answered. Another important question asked was whether or not the machines they voted
on were accessible. Of the Texans that responded 87% with blindness said the machines
were easier than prior methods. Eighty-three percent who were mobility impaired and
86% who were hearing impaired said the machines were more accessible than before.

When asked whether or not the disabled community believed the voting machines were
secure, Mr. Borel cited a study done by the American Association of People with
Disabilities. In this study they surveyed the disabled community on what their expressed
confidence was on security and accuracy of the different types of voting methods. Sixty
seven percent had confidence in the DREs, 64 % had confidence in precinct county scan,
36 % expressed confidence in the vote by mail method, and 28 % had confidence in
internet voting.

He stated he did not doubt there was some "technical evolution" that needed to happen,
but the fact was machines were a better process than what was in place before. The
number one complaint Mr. Borel presented to the committee from the disabled
community was poll worker training and explained there needed to be more emphasis on
demonstration accessibility features or avoiding setting up machines in difficult areas for
the disabled to get to.

While the testimony among our own county election officials commended the use of
DREs some states have gone to extra lengths to make sure their certified machines are in
fact what they say they are. There have been reexaminations of state and federally
certified voting systems across the United States which has led to decertification and
questions open to the actual security of DREs. California is one of the most well known
instances of a reexamination of voting machines.

The California Secretary of State contracted with the University of California to conduct
a top to bottom review of all the voting machines being used in California. The goal of
the review was to test the security of the three electronic voting systems, two of which are
used in Texas. Matt Bishop a University of California at Davis computer science
professor led a team on assessing vulnerabilities and said he was surprised how easy it
was for his team to break into the voting machines and added that if given more time they
would have been able to find more problems.

Each "red team" was to try to compromise the accuracy, security, and integrity of the
voting systems with out making assumptions about compensating controls or procedural
mitigation measures that vendors, the Secretary of State, or individual counties may have
adopted. Under those conditions each "red team" was able to breach the security of all
three systems. The summary states when developing scenarios "red teams" made no
assumptions about constraints on the attackers. As taken from the review, "The results of
the study must be evaluated in light of the context in which these election systems are
used. This emphasizes a key point often overlooked in the discussion of the benefits and
drawbacks of electronic voting systems: those systems are part of a process, the election process; and the key question is whether the election process taken as a whole, meets the requirements of an election as defined by the body politic.\(^{14}\)

The reviewers stressed no computer system or computer based system are made completely secure and the managers of these information technology systems must develop sufficient controls within the process in order for the system to meet specific standards and requirements. An information technology security plan they believed included three issues of interest in the field of electronic voting systems: physical security, security training of staff, and contingency planning. It was further pointed out any security system when dealing with technology traditionally relies on layers of mechanisms, not just one layer.\(^{15}\)

Red teams of the Top to Bottom study in California did mention issues regarding the capability of the review. One was lack of time, they believed if they had more time they would have been able to uncover several more vulnerabilities, but because of time constraints teams had to discontinue studies for the purpose of preparing reports. Another issue was the lack of information. Some documents were submitted too late to be of any value to the research.\(^{16}\)

Red teams identified several vulnerabilities and presented several scenarios' in which these weaknesses could be exploited to affect the correct recording, reporting, and tallying of votes. The study pointed out vendors should assume the components of their machines will be used in un-trusted environments and should therefore place mechanisms within the machines withstanding determined attacks.\(^{17}\)

All manufacturers testifying before the committee rebutted the reviews by agreeing even though the reviews have varied they have lacked the important components always considered during federal and state certification testing, i.e. election equipment and technology designed to be used, not in isolation, but in an environment of people and processes.

Representatives from Premier informed the committee while they may not have agreed with the methods used in these different reviews, they do take them seriously and are always working on developing new ways to increase the reliability, functionality, and security of their voting systems. Again, because of the time it takes to get certified manufactures believe they are unable to provide the new innovations to the county election officials in an up to date manner. The problem being security enhancements designed for new systems are still in the certification process. They have, however, included additional layers of defense in the new machines and believe if states can be patient they will benefit from the extensive testing being done.

While these reviews may provide important information about system architecture in a way that casts light on questions of security, it should not be mistaken as a realistic environment. This realistic environment is filled with election professionals, safeguarded
equipment, pass words and physical barriers which inhibit corruption. David Beirne, with ETC, said since the reviews neglected to include current election administration security guidelines and the machines were tested within an operational vacuum they have damaged the public perception of electronic voting equipment.

Even with the increased security procedures there are still those who believe voting machines should not be trusted. The committee took testimony from both local and out of state witnesses stating their cases against electronic voting machines.

Clint Curtis, a programmer who worked for Yang Enterprises in 2000, shared with the committee how easy it is to install an internal hack in a voting system. Mr. Curtis flew in from Florida to share with the committee his concern and experience. His concern was not an external hack, but an internal hack. An internal hack involves someone, who from within a company, programs the hack within the actual code of the program. There are millions of lines of code within a program defining what is seen on screen. One line of code amongst millions of lines of code can be built within the program "hacking internally" to disrupt the program and can be activated by anything such as a date, time, etc. Once it is turned on, the voting machine is merely following the directions that were programmed in it.

According to Mr. Curtis's testimony while working for Yang Enterprises he was approached by, among others, the incoming speaker of the Florida House of Representatives with a request to create a touch screen based program with hidden "buttons" planted inside the programs code. This program would be designed to flip votes during an election. Believing this was a project to learn how to mitigate electronic vote tampering, Mr. Curtis built the program. He wrote an additional program counter acting the vote flipping program. Upon delivering the program he was told the program was not built to stop potential flips, but to actually flip votes.

He delivered the program, but is unaware if it was used. Florida's law, he states, allows one to build a machine with the capability to flip votes, it is just illegal to implement such a program. The point Mr. Curtis made to the committee was the entire method of voting electronically is based on trust. Trust in the manufactures; trust in manufactures' employees and so on. He stated it would not take much to flip an election, and with a program he designed he showed the committee how it could be done. The Secretary of State's Office pointed out the problem with such a program is the current rate of time it takes to certify a voting machine. A person who were to write such a code would have to know years in advance who was going to be on the ballot before the actual election. Only then could the program be effectively carried out.

Dr. Dan Wallach is a professor at Rice University whose research focuses on computer security and has been researching electronic voting systems since 2001. He also worked for the California Secretary of State during the 2007 Top to Bottom review. He disagrees with the talk in regards to what was done in the reviews in California and Ohio.
Statements negating threat models, or that the study did not consider how poll workers operate he says are incorrect and all were considered. While all voting systems do have flaws, he believes electronic voting systems have a variety of security flaws enabling fraud of a scale and simplicity previously unknown.

Dr. Wallach cited practical voting machine errors he believes plagues voting technology. Human error is one main cause of failures with voting machines. While investigating a race in Webb County involving an incumbent and challenger, Dr. Wallach was unable to produce any evidence of actual fraud but was able to produce procedural errors on a county level.

He additionally cited findings from a report put together by Rice. For this study Rice created a DRE system that would lie on screen. The purpose of this project was to find out how many people would actually notice if a vote was changed or not. They discovered 60% of the test subjects did not notice when the review screen was manipulated. Still 95% reported they felt the review screen was useful and preferred the DRE to other methods of voting.

Dr. Wallach also brought up the issue of security vulnerabilities. When working for the Secretary of State of California he was on the team examining the Hart Intercivic systems. His team found an attacker could plug into any Hart eSlate machine and send it a variety of commands. What was worse they found was a single corrupted machine, when connected to the “tally” machine (used for inventory control, among other things) could possibly corrupt the tally system and subsequently attack other machines.

His conclusions are every electronic voting system used in Texas is unacceptably vulnerable to very simple yet staggeringly effective security attacks. Dr. Wallach said the same vulnerabilities he and others found could be exploited without leaving any evidence behind and cautioned just because no one is aware of any attacks does not mean attacks have not occurred. His suggestions to the committee were to limit DREs to one per precinct and to manually hand count paper ballots. He additionally suggested eliminating straight party ticket voting, which would reduce confusion among voters.

Bruce Funk, former election official of Emery County Utah, testified before the committee as well. He served for 23 years working in elections in Utah. After HAVA came into effect he was invited by the State of Utah to be on a selection committee to select the type of machines Utah was to buy. Being partial to the optical scan units in use in Emery County, he felt he would have a biased opinion and did not want to be on the committee.

Mr. Funk stayed on the committee and was opposed to DREs. He saw numerous calibration problems during testing. Upon initial acceptance testing in Emery County six DREs were rejected, two more would later have to be replaced. Mr. Funk felt as if he was being set up to fail and called in independent investigators. He called the organization Black Box Voting, who brought in computer programming expert Harri
Hursti from Finland. Mr. Hursti was given nothing more than a voting machine and found serious concerns. He in turn called in security expert Hugh Thompson of Security Innovations. Together they found password security holes or security holes only accessible by password, which were later deciphered. According to Mr. Funk Emery County entered into a contract with Diebold, the manufacturer of the DRE in question, to remove what Mr. Funk and the investigators found. He offered to pay for damages, but was denied the opportunity and was later locked out of his office and removed from his job.

Debra Medina, Wharton County Texas Republican Party Chair, does not agree with the success the county election officials have had. Her experience with voting machines has not been as pleasant and believes no amount of training is going to fix a technically flawed machine. She has a well documented case from November 2007 where a DRE changed a voter's vote on the screen in front of them and could not correct it. She has also had machines fail after public testing due to calibration issues, only later to find out one of the Attorney General's Examiners found and reported on the same issue when reviewing the machine.

Expert witness Jim March, a board director for Black Box Voting, believes the state certification process has failed at some level and showed the committee a pair of expert reports on machines from Wharton County Texas dated January 2007. He quoted James Sweringer PhD. an examiner for the State of Texas in regards to machines like the ones used in Wharton County. "We agreed in advance to divide up the tasks between the engineers. This allowed us to go into great depth of each, but it also meant that most results were not personally observed by every examiner." This statement, Mr. March believes is why some examiners report some issues and others do not. While assisting Debra Medina in Wharton County, Mr. March found vote total discrepancies very much akin to those found by another examiner a year earlier. The complexity of the electronic voting technology was best illustrated by Rep. Lon Burnam's statement, "The concern is that you have convinced me of the oversight problems, but the elections administrators convinced me they can't physically handle a paper ballot system."

Karen Renick, founder of Vote Rescue, is an advocate of the hand counted paper ballot. She believes there has been much misrepresentation and misinterpretation of the Help America Vote Act when it comes to electronic voting machines. She indicated HAVA does not require hand counted ballots be replaced by DREs, but only requires individuals who are disabled be able to vote independently and privately. This is verified in SECTION 301. Voting System Standards of the Help America Vote Act.

Ms. Renick believes the costs related to the electronic voting machines were not stressed enough during the transition of voting methods and the money spent itself is a reason to go back to paper. The first of this money spent being the 3.8 billion dollars given to the states from HAVA to acquire voting machines. Along with these machines, she explained, came additional unmentioned costs of storing the machines in environmentally controlled storage facilities, keeping the batteries, charged, transporting the machines,
insurance costs, yearly renewal of software licenses and the technical support accompanying the machines are all costs burdening the counties.

Through phone interviews with county election officials, according to Vote Rescue, they found that Hays County's maintenance cost was reported to go from $4,000 to $40,000. El Paso was said to lease a building for $30,000 a year for machine storage. She believes these costs should be redirected to the communities by way of increasing pay for poll workers and investing in more poll worker training, not on electronic voting equipment.

Alison Harbison, Shelby County Clerk, expressed her concerns of the costs attributed by the voting machines. Shelby County has 14,485 registered voters with 14 county precincts and 6 school districts. Even when city and school elections are held jointly to assist in costs for entities, the cost increase has been over 50%. Ms. Harbison believes the election software companies have exclusive control of the costs. By adding political subdivisions under a population of 2,000 to the exemption of electronic voting requirements, she believes, would give the smaller counties needed fiscal relief.

All manufactures testifying urged the legislature to look closely at federal guidelines if it considers changing certification procedures. Doing so would minimize duplication, save state resources, efficiently allocate staff time, and minimize the time it takes to certify a voting system effectively. In turn reducing the costs made up on a county level.

Advocacy groups like Vote Rescue believe going back to manual hand counted paper ballots is the only way to stay away from stolen elections. They believe the idea could effectively work if all precincts were smaller in order to make the manual count process more manageable. However, in regards to smaller precincts Representative Burnam pointed out, from practical experience, one does not know how many voters will show up in one precinct to the next. All the state would be doing is creating a practical need to have more people working at precincts, because the number of precincts has increased.

Abbe Waldman-DeLozier of Vote Rescue stated, "If it takes days to count the votes then that is what needs to happen, because what we have now is what I call fake elections." She said in doing their own surveys, 80% of the people approached in their citizens exit poll were willing to tell them how they voted because they were concerned with the voting machines.

May Schmidt has been an election judge in Travis County since 1970 and has worked with every form of voting from manual hand counted paper ballots to the DREs. She reported to the committee she hears lots of complaints from her precinct because of electronic voting. She believes in some cases paper ballots can handle problems like massive power outages and not being able to be let into a building on time, better than the machines can.

Chairman Berman was honest with those in attendance, "You are asking us to tell 254 counties to forget what you are doing, get rid of all the machines and go back to paper
ballots. This legislature is very reluctant to have a mandate of any kind on our counties, county commissioners, and our county judges. I understand what you are saying, we all do, but I have to be perfectly honest with you even if such a bill came out of this committee, I doubt it could pass in the legislature." Representative Bohac followed the paper ballot argument by pointing out the reason why there was a move from paper was because there were many types of problems and fraud with paper.

**Voter Verified Paper Audit Trails (VVPATs):**

Even though all DREs are required to have a paper audit trail, there is still concern with the lack of verification of the ballot by the voter. To meet public concern the manufactures provided the Voter Verified Paper Audit Trail or VVPAT. California was the pioneer in requiring VVPATs. Voting systems with out VVPATs in California after July 2006 could not be used.\(^1\)\(^8\) Currently there are 16 states (or at least some jurisdictions in these states) using DREs requiring VVPATs: AK, AZ, CA, CO, HI, IL, IA, MO, NV, NY, NC, OH, UT, WA, WV, WI. Three states (or at least some jurisdictions in these states) use DREs with VVPATs, but have no official VVPAT requirement: MA, MS and WY. Seventeen states use or will use paper-based voting systems (the vast majority are counted on optical-scan systems): AL, CT, FL, ID, ME, MI, MN, MT, NE, NH, NM, ND, OK, OR (vote-by-mail), RI, SD, VT. Fourteen states and the District of Columbia currently use DREs in at least some jurisdictions (in DE, GA, LA, MD and SC they are the only system in use statewide) and do not use nor require VVPATs: AR, DE, DC, GA, IN, KS, KY, LA, MD, NJ, PA, SC, TN, TX, VA.\(^1\)\(^9\)

In the most recent congressional session there were a number of bills mandating the use of VVPATs. However, due to the large outcry from computer scientists, Secretary of States, and county election officials from across the United States these bills did not become law. Would VVPATs help increase voter confidence and security? While some believe it would, others contest VVPATs would not assist in the voting process would be a waste of government dollars and a false sense of security.

Every county official testifying before the committee agreed the VVPAT in itself is not a security measure and believes it would not be a good idea to require VVPATs in the State of Texas. Dana Debeauvoir told the committee, "Many of us believe that there is no roll that the voter can play in electronic security, and where the only security features is hoping that a voter will catch an error. That's not security. A VVPAT will give them an opportunity to see what they have entered in, but VVPAT is not security at all."

Joy Streater went to a demonstration of the VVPATs. She recounted three times the machines jammed. She explained what she saw was a roll of thermal paper able to hold 100 ballots. As she illustrated if a precinct has 20 machines and 4,000 ballots it will take many small rolls of paper and a worker whose job will be to watch paper. The paper she stated would be one more thing to lose and would be an additional cost. Bruce Sherbet of Dallas County cautioned the committee stating Texas should really pause and consider the VVPAT and not make it a knee jerk reaction as he has seen other states do.

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Dennis Borel (CTD) stated most disability groups are opposed to VVPATs, because at the time he believes the technology does not exist so voters would have an equal footing on verifying the ballot, especially those with disabilities. He believed there could be a time when the technology is there, but is not here now.

Even advocacy groups originally who were proponents of the VVPAT have changed their position. Vicki Karp, of Vote Rescue, gave reasons why their organization has changed their position on VVPATs. She cited 20% of the paper trails turn out to be illegible or unusable due to double printing or paper jams. Numbers from Caltech/MIT studies, she reported, show up to 80% of voters not checking the trail before casting their votes. Ms. Karp cited a study done in Cuyahoga County Ohio where 10% of the paper trails did not match up with a voters vote.

One report studied came from Georgia. This report studied what resources were used when using a verifiable paper trail and whether or not it was a good option for Georgia to use. Cobb County Georgia participated in a pilot program in which one precinct of three counties in Georgia would produce a VVPAT for the 2006 November General Election and any runoff elections following. This pilot program was established to assist the Georgia legislature decide whether or not a VVPAT requirement was a viable solution.20

What Cobb County found was the precinct chosen to have machines with paper trails had constant lines of 1 and 2 hours long during Election Day where other precincts had only occasional lines not more than 20 minutes, but sometimes as long as 50 minutes.21 An issue thoroughly covered within the Cobb County report was the large amounts of extra paper having to be handled and stored. A paper tape contained around one and a half feet per voter. With 976 voters in that precinct alone the paper accumulated was approximately 1,464 feet of paper tape proving to be very unwieldy and hard to handle. Much of the time spent by Cobb County election officials was unwinding and adjusting paper tapes.22

To audit the VVPATs it was necessary to staff 18 people each day for 5 days. Cobb County started with four counting teams of three workers. However, at the end of the first day election officials believed they had not progressed sufficiently enough for the time span given and added two more teams of three.

There were two recorders and one caller to each team. Each time the caller said the name of a candidate the recorders made a vertical mark. Once there were four vertical marks a fifth mark was hashed through the vertical marks. As soon as this occurred the two recorders would call out "Tally". If "tally" was not called by both recorders at the same time, they were required to start the process all over again and find the error before going on.

It was also necessary to expand the space utilized for auditing ballots as well. Cobb County started out with an auditing room containing around 400 square feet, but ended up
having to acquire a second auditing room containing 155 square feet to adequately accommodate the process.

What were the results? Cobb County Election officials found all manual tallies matched the machine counts, proving the machine counts were correct. However, cost as measured in both time and money was high. There were 24 different employees, three managers, and a Diebold technician that were used in a course of five days. Their total cost for the one precinct was $2,937.45, which did not include the three managers and Diebold technician (whose salary was paid by Diebold). The total hours between teams were 312.25 hours in five days. The time it took for the teams to count one ballot varied from three to eleven minutes averaging at five minutes a ballot. A total of 11 hours were spent on "recounts" caused by human error.

The Cobb County election officials concluded, "The manual audit proved the touch screens did count the votes accurately, however, it also proved having humans count by hand is not an efficient method of counting. Humans make lots of errors and have to go through the steps many times in order to get the right answers. Humans take a very long time to do what machines can do instantaneously." They suggested in their report if VVPATs were mandated, the manual audit process should only be used for selected races.

The time required to count ballots by hand would prevent the election officials from even being able to conduct the next election. For example, the Cobb County election officials calculated how long it would have taken them to count the General Election of 2004 in Cobb County alone. There were 229,231 ballots cast in Cobb County, if they averaged 5 minutes a ballot as they did in the manual audit then it would have taken them 19,102 hours to manually count the ballots. They calculated if they had 20 teams working 40 hour weeks the manual count would take 24 weeks. The price tag for such a project, Cobb County estimated, would be $520,000. Incidentally, Georgia is a state not requiring VVPAT machines. How many combined hours would it take for a state the size of Texas to manually count ballots? Using Cobb County's average of 5 minutes per ballot and multiplying it by the 4,399,116 votes cast in the 2006 Gubernatorial Race (as found on the SOS website) then dividing that total by 60 in order to extract the time, it would take 366,593 hours or roughly 42 years to manually count those ballots.

The committee also made contact with Nevada, a state requiring VVPATs, to get a balanced look at states that do not use VVPATs vs. the ones who do. Committee staff contacted Clark County Clerk, Harvard Lomax, in North Las Vegas, Nevada in regards to the states' policy on VVPATs.

In Nevada the electronically recorded results are considered the voter's ballot and the paper tape or voter trail is only used for auditing the accuracy of the electronically recorded results. These paper tapes are not used for recounts, but are only used for auditing. Voters are not allowed to keep the paper tapes. When asked about machine failure Mr. Lomax stated since the VVPATs are mechanical devises they do experience
paper jams. However, all in all failures have been few and far between. Most jams are the result of workers improperly installing the paper. Since the VVPAT mandate Clark County has been able to reduce the number of human induced errors by improving training and quality control when threading the paper.

In regards to costs associated with VVPATs, he stated because the rolls of paper are thermal paper there is no cost for ink. However, because of the hot climate in Nevada they must store the thermal rolls in water cooled ware houses. The thermal paper itself is $1.25 a roll and he estimated they would use about 10,000 rolls of paper in the 2008 Presidential Election. He believed in comparison to the over all Presidential Election the cost of paper would not be significant.

When asked if he believed the benefits of the VVPATs outweighed the problems and costs associated with them Mr. Lomax stated, "This is a difficult question in that it is very subjective. We have 5,000 VVPATs that would now cost the county $5,000,000. Since the VVPATs were added to our electronic voting machines, the complaints I used to hear about 'paper trails' have essentially disappeared. I very much appreciate that. On the other hand as County Registrar, I know that the machines are accurate and that the entire cost of operating and maintaining the VVPATs is simply to maintain public confidence in our election process. Obviously, one can argue that no price is too high to ensure the public has faith in its elections, but $5,000,000 is quite a bit to quiet what amounts to a very, very small but very, very vocal portion of the electorate."

Mr. Lomax gave this advice to the committee before considering enacting legislation mandating VVPATs, "Don't rush into anything. Pay close attention to what the Election Assistance Commission is doing in regards to federal standards for voting equipment. The EAC moves very slowly and you don't want to spend a lot of money into voting equipment that in a year or two may no longer meet federal standards."

The committee was also fortunate to receive written testimony from Michael Shamos. Michael Shamos has been a faculty member in the School of Computer Science at Carnegie Mellon University in Pittsburgh since 1975, an attorney admitted to practice in Pennsylvania and before the United States Patent and Trademark Office, an examiner for Pennsylvania and has performed 121 voting system examinations and recently was on the task force of the Florida Secretary of State that examined the source code used in voting machines in Sarasota County during the disputed Buchanan-Jennings congressional election. He testified before the U.S. Senate Committee on Rules and Administration on July 25, 2007 regarding the proposed bill mandating VVPATs. In his testimony he argued even though the bill makes repeated reference to verification it does not come close to providing it. The VVPATs may show the voters their choices are correct but does not verify the ballot will even be counted, or that it will even be present for a recount or a later audit. He argued a VVPAT does not provide privacy, because a simple comparison between the VVPAT and the poll list gives away everyone's vote in violation to the SECTION 201 requirement of a secret ballot."
During the time the legislation in question was heard there were no commercially manufactured DREs meeting the requirements in the legislation. This legislation would have effectively outlawed DREs in the U.S., despite the fact they have been used in the U.S. for 28 years with out a single demonstrated incident of tampering in an election. Conversely, in the same period he continued, there have been hundreds of people who have gone to jail for tampering with paper ballots. Mr. Shamos pointed out the main problem with DREs is reliability, stating 10% of machines fail on Election Day. He continued by saying it should be obvious that adding one more mechanical item like a printer only would reduce reliability. Conducting audits would be lengthy he testified, counting 2% of ballots in a state with five million voter would require approximately 16,000 hours or eight man years. This would require the service of over 100 people full time for three weeks just in one state.

Michael Shamos believes end to end verification is the holy grail of voting systems; however, no such verification is now possible with any commercially available system. He urged the Senate Committee not to require anything essentially mandating some existing system and discouraging research and development into voter verifiable systems. He also believed there is no reason why election-dedicated software should be confidential. As long as codes in voting systems remain secret, he believes the public will never trust it. He left the Senate Committee with these words, "The very idea that a paper record is secure at all continues to be refuted in every election. It is folly to mandate nation wide changes to our voting systems each time a problem manifests itself. Voters and election workers need time to adjust to such changes which used to occur approximately every few decades, not every four years."

Recommendations:

The committee would like the 81st Legislature to understand the issue regarding electronic voting equipment is a complex topic and no solution is as easy as it may appear. There are many variables to reflect on when considering changing standards or the Election Code. No decision should be based on emotional reactions but educated decisions. The 81st Legislature should not dismiss concerns presented, it is through these concerns the Legislature may be able to pinpoint actual problems and be able to assist with the development and security of Texas's current and future voting methods. The committee also advises the Legislature to be mindful of those officials carrying out any changes made to law and realize county election officials require sufficient amounts of time to properly follow through with those changes. The following are the recommendations to the 81st legislature.

1. After listening to testimony and researching the current VVPAT process the committee has serious concerns about the implementation of Voter Verified Paper Audit Trail technology. As Michael Shamos stated mandating this medium would only discourage the development of perhaps a newer and better medium. The costs associated with VVPATs would be large not only monitorial but in time as well. The committee believes it would not be an efficient process at this time. While the committee believes
providing a secure method of auditing elections is a worthy policy goal and is a high priority, the committee believes the VVPATs may not be an adequate source of security. The committee asks this legislature to be patient while working with the SOS, manufacturers, county election officials and advocacy groups as a more innovative and secure voter verifiable audit system is developed.

2. While the committee realizes all counties work diligently to properly execute security procedures during election time, it does find it disconcerting that all 254 counties may have different testing standards. The committee believes it would be healthy to look into a standardized testing method for the state. With the help of the SOS and the county election officials, the Legislature may be able to come up with a solution allowing all counties to participate.

3. The committee believes the Legislature should review the current certification process with the Secretary of State's Office to make sure Texas does not "double up" on certification processes carried out on a Federal level. Expediting the certification process, while not jeopardizing the integrity of the process, would lower costs to the manufacturers. This in turn would lower costs on a county level.

Additionally the committee believes the SOS should review all procedures within their certification process in order to make sure there are no oversights when certifying a DRE.

4. Throughout the hearing the committee heard of instances of voting machine failures, which were the cause of human or procedural error. The committee recommends working with the SOS and county election officials to increase training in the procedures surrounding the electronic voting machines in order to reduce the number of procedural errors.

5. In regards to voter confidence the committee believes all counties should publicize all examination dates of electronic voting machines and keep the public well informed of the processes being used during and after election dates.

6. In response to the idea of a Texas Election Center, the committee believes this idea should be thoroughly looked into during the 2009 interim. A Texas Election Center could be responsible for technical support currently depended upon the manufacturers. Testing, consultation, ballot design, and a number of benefits could be provided by such a center.
Charge No. 2

Examine the prevalence of fraud in Texas elections, considering prosecution rates and measures for prevention. Study new laws in other states regarding voter identification, and recommend statutory changes necessary to ensure that only eligible voters can vote in Texas elections. Specifically study the Texas mail-in ballot system, the provisional voting system, and the various processes for purging voter lists of ineligible voters.

Background:

It was October 3, 1707 and all eyes were on Edinburgh, Scotland. Scottish parliament would vote on the unionization treaty between Scotland and England. Even though most Scots hoped this union would become a federation of the two kingdoms they were dismayed as they soon discovered the two nations would unite to become the new entity of Great Britain; a government being far more English than Scottish. Though the Scotts would have access to England’s overseas markets, and though this union would eventually bring back prosperity to the downtrodden country, this did not justify the means in which some votes of unionization where claimed.

Orders from London to the leader of pro-union forces, James Douglas, Marquis of Queensberry were simple: secure ratification of the union treaty by any means possible, up to and including buying votes. London had even provided him with a secret slush fund of twenty thousand pounds to assist in his task. It is unclear how many votes were actually bought, but it does not hide the fact there were votes bought. This one example of election fraud happened just over 300 years ago; one thing learned from history is as years change, the acts of some people in a society do not.

Black’s Law Dictionary defines "election fraud" as illegal conduct committed in an election usually in the form of fraudulent voting. Examples include voting twice, voting under another persons name (usually a deceased person) and voting while ineligible. Fraudulent voting is not the only form of election fraud. In fact, the words "election fraud" and "voter fraud" hold a much broader scope and refer not to a particular crime, but to a variety of offenses found in the Texas Election Code where an individual or a group of individuals attempt to influence the outcome of an election through illegal means. Election fraud ranges from illegal voting and vote buying to tampering with electronic voting equipment. It may include, but is not limited to, falsifying voter registration information, forging mail-in ballot applications, coercing voters to vote for specific candidates, and a number of other offences.

Texas itself has had a history littered with examples of voter fraud. During the election of 1896, in Robertson County, when there were several African American candidates on the Republican-Populist ticket, Democrats are reported to have stolen ballot boxes and intimidated voters by riding through the predominantly African American precincts with guns drawn.
The mid 1900s were a time marked by powerful political party machines. Border counties in particular were reputed to have some of the most fraudulent elections in the country, credited in part to "Duke of Duval" machine boss George Parr, who exerted enormous political influence over Duval and Jim Wells counties. Machine bosses and large employees, or *patrones*, would use their substantial economic power over their workers, including many Mexican nationals, to control their votes, and would even import thousands of voters from Mexico on Election Day to vote as instructed. This so-called block voting has been reported in South Texas since the late 19th century.\(^\text{32}\)

Texas has come a long way from the rough and tumble past of machine bosses and the flamboyant theft of ballot boxes. Voter fraud tends to be more subtle and happens less frequently today than it did so many years ago, but still exists in Texas. Today there are divisive splits in Texas government regarding fraud. Some believe it runs rampant, while others believe it does not exist at all. Questions surrounding the frequency of fraud in Texas are the catalyst for Charge No. 2. Is there fraud? How much? Is there a problem covering the entire state or is fraud merely in small pockets of the state? The purpose of Charge No. 2 is to examine the prevalence of fraud in Texas, consider prosecution rates and measures for prevention; study new laws in other states regarding voter identification and recommend statutory changes necessary to ensure that only eligible voters can vote in Texas Elections; specifically study the mail-in ballot system, the provisional ballot system and various processes for maintaining voter lists of eligible voters.

The committee investigated this charge in a public hearing on January 25, 2008 and discussed all of these topics at great length with different state agencies, county election officials, advocacy groups, and experts who traveled from out of state. This report will first cover three of the internal structures helping make Texas' electoral process: the absentee (mail-in ballot) system, the provisional ballot system, and the different procedures used to maintain our voter roles. Next the report will cover the prosecution rates of voter fraud found in Texas and will pinpoint problem areas where most "election" or "voter" fraud occurs. Thirdly, this report will briefly touch on the issue of voter identification, will look at what other states are doing in regards to photo identification, briefly touch on the arguments making up the controversial issue of photo identification, and then will look into considerations states must face when deciding on whether or not to enact a photo identification program. Finally, the committee will give its recommendations to the 81\(^\text{st}\) Legislature on ways to further secure our voting processes.

**Three Processes:**

**Absentee (Mail-In) Ballot System:**

Today 21 states including Texas and the District of Columbia require an excuse to vote absentee by mail and 29 states that allow absentee voting by mail without an excuse. Out of all 50 states Oregon is the only one voting entirely by the mail-in ballot system.\(^\text{33}\)
In the State of Texas each election is required to conduct early voting either in person or by mail. A voter is eligible to vote by absentee (mail-in ballot) if they will be absent from their county of residence at the time of the election, if they have a sickness or disability preventing them from going to the polls, if the voter is 65 years or older, or is confined in jail. A qualified voter may also vote by mail if they are participating in the State’s confidentiality program.\textsuperscript{34}

For someone to vote by mail they must submit an application or request (which can be made by the voter) to their early voting clerk. The request must include the voter’s name and address where they are registered to vote, the reason for voting by mail, and an indication on which election that person would like to vote in. Voters may have someone assist them when filling out their vote by mail application. Anyone other than an early voting clerk or a deputy may sign on the voter’s application as a witness as long as they indicate their relationship status with the applicant they are witnessing for. A person cannot witness for more than one applicant, however, they may assist as many voters as they would like. If merely assisting a voter, that person still must indicate so on the voter’s application.\textsuperscript{35} Anyone who witnesses for more than one voter commits a Class B misdemeanor. Moreover, each additional application a person witnesses for constitutes as a separate offense. In order to protect a voter’s application, the Election Code states that a violation of this kind does not affect the validity of an application involved in that violation.

These applications for mail-in ballots must be submitted to the early voting clerk by mail, common or contract carrier, or fax on or after the 60th day before Election Day and before the close of regular business, or 12 noon, which ever is later on the 7th day before Election Day. An application will be considered submitted once the clerk has received it. The voter may also choose to deliver the application by hand to the clerk at least by the close of the regular business day before the first day of the early voting period. An official mail-in ballot application will then be sent to the voter by the early voting clerk without charge. The contents of these applications and its regulations are established by state law in the Election Code.

\textit{Provisional Voting:}

Provisional voting was introduced through the passage of the Help America Vote Act (HAVA) of 2002 and was a procedural response to the issue of voters being turned away from the polling place. This system ensures that any individual wishing to cast a ballot at a polling place may.

It is a common myth provisional ballots are only counted if they will have an effect on the outcome of an election. This is not true. There are two different ways states decide to count provisional ballots. Thirty states, Texas included, and the District of Columbia require that a provisional ballot must be cast in the correct precinct before they are counted. Fifteen states count provisional ballots only if they are cast in the correct jurisdiction, i.e. municipality, county, state. These states include: Alaska, California,
Colorado, Georgia, Kansas, Louisiana, Maryland, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. Idaho, Minnesota and New Hampshire are exempt from HAVA’s provisional ballot requirement because they allow Election Day registration. North Dakota is exempt because it does not have voter registration and Maine allows voters to cast challenged ballots.36

Texas’s provisional ballot system requires a provisional ballot be cast in the proper precinct in order for it to be counted. It is important to note that given Texas’ early voting in person system, the precinct requirement is limited to Election Day itself.37 This factor is important to take in account when comparing Texas’ provisional voting system to other states’ systems.

There are many instances when someone would vote provisionally. An individual who claims to be properly registered and eligible to vote, but whose name does not appear on the list of registered voters and the voter registrar cannot be reached or whose registration status cannot be confirmed by the voter registrar; an individual who is not on the list and did not provide a voter certificate or other form of identification, or an individual who is registered in the precinct but whose registered address is not located in the political subdivision conducting the election are just a few instances establishing whether or not someone is eligible to vote provisionally. One great benefit of the provisional voting system is the Provisional Voter Affidavit Envelope, the affidavit a voter must properly fill out before voting, doubles as a voter registration application in case the voter is not registered.

Once a voter goes through the process and votes provisionally their ballot is sent to the voter registrar who will review the provisional voter affidavits within 3 business days of the election and organizes the ballots by precinct. The voter registrar places all the envelopes in a secured container and delivers them to the Early Ballot Board meeting or General Custodian of the election records. Here the ballot is reviewed and determined whether or not to be counted. The ballots to be counted are removed from their envelopes and tabulated. Once counted the ballots are put back in the secure container and a notice is sent to provisional voters not later than the 10th day after the election, letting each provisional voter know if their ballot has been counted or not.

The Secretary of State’s Office (SOS) has taken a proactive roll in educating the state’s poll workers with regards to provisional voting. Upon request the SOS will conduct onsite election schools to train election workers on a variety of polling place procedures, including provisional voting. The SOS also provides extensive materials to county election officials to be used in training workers and holds annual seminars for all involved running the elections of this State. The accessible elections staff providing one-on-one guidance and assistance via telephone and email to any county election officials, election workers, or individual voters contacting them should not be forgotten either.

There are SOS legal staffs who conduct extensive training workshops to articulate the laws and procedures relating to elections. These workshops address specific topics,
which include Election Day procedures and provisional voting. The SOS has also implemented online training providing individual poll workers detailed instructions on polling place procedures, how to qualify voters, and provisional voting.39 The Secretary of State’s Office understands the importance of keeping all those involved with elections educated on the newest applications and makes every effort to do so.

**Maintaining Voter Rolls:**

The committee was also instructed to study the way voter registration lists are maintained in the State of Texas. Testimony and research found that the Texas Election Code provides a variety of methods to properly maintain these voter registration lists. The registration files are overseen at a state level by the SOS and at the county level by the voter registrar.

The SOS maintains the official list of registered voters through the centralized state computer system called TEAM or Texas Election Administration Management system. The state of the art TEAM system was built to fulfill a requirement by the Help America Vote Act (HAVA). HAVA mandated all states develop and maintain a statewide, centralized, interactive computerized data system, among other things, housing the name and registration information of every legally registered voter in the state. TEAM replaced the non-HAVA compliant Texas Voter Registration System. (TEAM is further investigated in Charge No. 3; details regarding TEAM in that charge will not be repeated in this report). There are two types of counties using TEAM, online counties and offline counties. Online counties are directly plugged into TEAM, meaning all information the county inserts while registering a voter is on real time. Offline counties, which are mainly urban counties, are not on real time and must report daily to the TEAM system in order to update all files and to verify voter registration applications.

In January of 2007 when TEAM release 1 was first launched 227 counties were online, by March 2008 after continuing difficulties with the new system and before the TEAM Validation Test commenced, 215 counties were online. With the success of the TEAM Validation Test (which is detailed along with the State Auditors Report in Charge No. 3) more counties came back online. As of August there were 218 counties online and the number is expected to increase with continued enhancements.

The TEAM system must verify the Texas driver’s license number or personal identification number of each voter registration applicant. If an applicant does not have a driver’s license or an identification card, the applicant must supply the last four digits of their social security number. If the SOS is unable to verify the applicant the applicant is registered and the SOS flags that applicant as “ID” meaning when the person in question comes to vote they will have to provide a proper id as described by the Texas Election Code.39

Once voter registration applications are entered in TEAM, the system searches for any discrepancies regarding a person’s information and will automatically cancel any
duplicate registrations when a strong enough match occurs between records. For instance, the system will cancel an older registration card in order to keep everything up to date. If someone moves to Austin from Dallas and registers in Austin, but is still registered in Dallas the older of the two registrations, in this case Dallas, will be cancelled. If a weak match is identified the information is sent to the voter registrar who will send a confirmation notice to the voter. If the voter does not respond the voter’s name will be placed on the suspense list.  

Between November 15 and December 5 of each odd numbered year the SOS office will send out a non-forwardable renewal voter registration certificate to each registered voter. If a certificate returns to the voter registrar he or she will send out a forwardable confirmation notice with a response form. If the voter confirms their new address within the county their registration card is updated. If the voter responds, but no longer lives in the county then they are cancelled within that county. In the case the voter registrar receives no response the voter in question is put on a suspense list. Those on the suspense list are still eligible to vote as long as they still reside in the county and political subdivision conducting the elections.

The voter may even vote at a precinct they are registered in, but currently do not reside in, provided the voter completes a statement of residency form affirming residency in the same county and providing their new address within the county. A voter’s name is on the suspense list for a period of two federal general elections. If the voter does not vote within this time period or does not update their voter registration card their name is removed from the voter registration list.

The SOS also receives weekly updates from the Bureau of Vital Statistics to determine deceased voters who need to be removed from the lists. The Department of Public Safety shares information enabling the SOS to keep the voter registration rolls updated with regards to individual felony convictions. When removing voters from the registration list the SOS office takes very careful steps in doing so and is extra careful in making sure they do not mistake a so called “dead” voter with someone who has the same name. As to whether or not the lists are maintained; in 2002 there were 377,133 voters purged using the suspense list process and in 2004 (a presidential year) 520,784 voters were purged from the rolls using the same process.

Voter registration applications are also received on a local level and are maintained through TEAM. There are a number of abstracts filed monthly with the county’s voter registrar enabling them to determine who should be removed from their voter registration lists. These compiled abstracts tell the voter registrar if there are deceased voters, if there are voters who have become mentally incapacitated or partially incapacitated and are no longer eligible to vote, or if through comparing with the local jury wheel information they find a registered voter is ineligible to vote. Lists of felony convictions from DPS are sent to the voter registrars by the SOS so they can promptly cancel the felon from their registration list. One advantage the local voter registrars have over the SOS is they are plugged into their community. Being active in the community allows local voter
registrars to be privy to updated address information provided by voters, deaths in family, and things of that nature.

As one can see, the Texas Election Code provides a selection of procedures both the state and local officials can use to ensure the state's voter registration rolls are accurately and consistently maintained. The safety and efficacy of voting in Texas is the top priority of the Secretary of State's Office and is a duty not taken lightly.

Prosecution Rates and Fraud in Texas

A large aspect of this charge was to investigate if there is proof of fraud in Texas Elections and if so where is it prevalent. The committee talked with Eric Nichols, Deputy Attorney General for Criminal Justice, to find out the known prosecution rates of election fraud in Texas. County election officials as well as experts in the state discussed at length with the committee where in the election process they see problems with fraud and how the state would be able to mitigate these issues.

At the end of the hearing all committee members could agree that there is some amount of fraud in Texas' election process. What the committee found is most election fraud happening in Texas occurs within the absentee or mail-in ballot system, through voter registration, and through politiqueras or vote brokers which are predominately found in south Texas.

Another highly controversial topic brought up during the hearing was the debate of whether or not illegal aliens or legal non-citizens were voting, and/or on the voting rolls. Through talking with our county election officials and other experts the committee found the chances of an illegal alien actually voting are very slim; however there are legal non-citizens who could be on the voter registration lists and according to testimony, especially true in south Texas, there is not sufficient information to know who is a legal non-citizen and who is a U.S. citizen. As was established in the State Auditor's report on the SOS Voter Registration System, while there is information regarding tracing the deceased and state felons ineligible to vote, there is currently no authoritative source of information establishing U.S. citizenship.43

The committee agreed mistakes do happen and mistakes are just that, and should not be considered fraud. The committee was shown there is information spread into the media which has not been thoroughly examined and is used to inflate the perception of election fraud. These media stories should be looked at very carefully and should not be taken to heart until all facts are established. What the committee found is there is no one solution, but a combination of solutions necessary to properly mitigate these problems.

After hearing testimony Chairman Berman appointed a sub-committee to further investigate mail-in ballots. Representative Rafael Anchia was appointed Chair of the sub-committee on Mail-in Ballot Integrity. He was joined by Representatives Lon Burnam and Kirk England. Along with looking into the vulnerabilities of the mail-in

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ballot system, Representative Anchia offered for the subcommittee to investigate the issue of non-citizen voting. This sub-committee has held two hearings on the issues of mail-in ballots and non-citizen voting. The sub-committee report covers these two issues in further detail.

The Deputy Attorney General for Criminal Justice, Eric Nichols, of the Texas Attorney General’s office reported to the committee on the current prosecution rates in the State of Texas. He made clear to the committee in regards to the full scope of the committees' charge in investigating election or voter fraud in Texas the cases in the Attorney General’s Office (AG) are entirely referral driven, and the AG does not act as a frontline monitor or regulator for these issues. Thus the data given to the committee reflects only a portion of the state wide picture. Mr. Nichols also made clear, because of confidentiality reasons under the law and for respect of those who may be under investigation or prosecution he would only be able to respond in general terms regarding numbers and hypothetical fact conditions.

The AG is dependent on three parties or sources it gets its referrals from. The first is from the Secretary of State’s Office (SOS) who takes questions and reports from outside parties and determines whether criminal conduct has occurred. Concerned local citizens and voters filing affidavits are the second source the AG relies on. Finally, the local law enforcement agencies and local election officials provide referrals to the AG. Mr. Nichols informed the committee even though the legislature has given the AG’s office direct authority and jurisdiction in Election Code violations, the AG's jurisdiction is not exclusive, so local prosecutors and authorities can exercise this jurisdiction as well.

From August 2002 to January 2008 there have been 108 election code violations or referrals the AG's Office has received. To put into perspective, within this time frame the State of Texas alone has held three Special Constitutional Amendment Elections, two Gubernatorial Elections, four Gubernatorial Primary Elections, one Presidential Election and two Presidential Primary Elections totaling 12 state elections. Under these elections alone there have been 25,508,522 votes cast in the State of Texas from August 2002 to January 2008.44

The SOS referred 60% of these cases, 12% were referred by local prosecutors, and the rest were referred from local election officials. According to Mr. Nichols 34 of these cases are connected to primary elections, 26 are concerned with general elections, and 48 are connected with other types of elections, i.e. school board, municipal, and special district. However, it is very important to take in account that within one case you may have multiple violations. For example, Mr. Nicholas pointed out in Duval County one case involved 500 voter registration applications rejected.

Within these 108 referrals there have been 22 prosecutions under the Election Code. There are 15 cases fully adjudicated and 7 cases are awaiting trial. Of the cases successfully prosecuted, 86% of these were referred by the SOS. Of the cases referred by the SOS 63% arose during the primary, 13% arose during general elections and the
remainder arose during special elections.

With respect to the 22 prosecutions as rough numbers, as Mr. Nichols put it, 14 used the alleged unlawful use of the mail-in ballot process, 1 involved campaign finance violation, 3 involved unlawful conduct at a polling place, and 4 cases involved other obstruction to the election process. When asked what Mr. Nichols meant by unlawful conduct, he responded by explaining one situation where a person escorted an elderly couple to the ballot box and actually stepped in front of them and voted their ballots for them. Cases the AG has prosecuted range from official oppression by an election official, to the activist who illegally marked an elderly couple’s ballot, to the citizen who voted twice by illegally casting a ballot for her deceased mother.

One case out of Refugio County in 2007 involved a Refugio County Commissioner tampering with mail-in ballots during the 2006 Democratic Primary election. A grand jury indicted the commissioner in February 2007 after the Refugio County Sheriff’s office performed an investigation and filed a complaint with the SOS. According to investigators the commissioner had mail-in ballots mailed to friends and supporters. Once ballots arrived the commissioner picked up the ballots and took them to in-county voters, who marked them in the commissioner’s presence. Under a plea agreement the commissioner pleaded guilty to one count of tampering with governmental records, a state jail felony and to possessing the ballot of another person, a Class B misdemeanor. The commissioner is facing 90 days in jail and five years probation. He had to immediately resign his position and pay a $1,500 fine. The commissioner was also required to pay an additional $1,000 fine on possession-of-ballot charge and may be obligated to pay restitution to the county for theft of services.\textsuperscript{43}

Items brought up during Mr. Nichols testimony in regards to providing adequate protection to the election process were: Does the current law provide proper enforcement in these cases and should the AG’s office be better equipped to handle more cases? Mr. Nichols was not able to comment in terms of law and legislation, but did offer in terms of the cases he discussed, the AG’s office was able to prosecute each case thoroughly with existing law. What could be the issue, as the committee briefly discussed, are enforcement and the need for more people in the AG’s office investigating election fraud cases. Mr. Nichols believed given their staffing both in the criminal investigations division and the criminal prosecution division the AG’s office is able to handle the workload they are given through referrals, however if they had more people the AG’s Office would be able to prosecute more voter fraud cases.

While talking with county election officials the committee did not find a blanket of fraud across the state. County election officials have differing experiences across the state. Most did not have any issues regarding voter impersonation fraud. Steve Raborn has had over a year and a half of experience as Tarrant County Elections Administrator and was not aware of any allegations of voter impersonation fraud in Tarrant County. Jacque Callanan, Bexar County Elections Administrator, has not seen any intentional voter impersonation fraud in Bexar County.
Dana Debeauvoir, Travis County Clerk, gave testimony of only one instance of voter impersonation that has happened in Travis County in a time span of over 21 years. The case she referred to involves a woman who showed up on the voting rolls as voting twice. When confronted over the telephone the woman was very surprised and scared and denied she had voted twice. Later in the day Ms. Debeauvoir received a phone call from the woman’s daughter, who had the same name as her mother, explaining she had voted for her mother in an attempt of being helpful. However, the daughter had failed to mention this to her mother who in turn voted as well. This one case did not lead to any prosecutions and the mother was exonerated.

Paul Bettencourt, Harris County’s Tax Assessor and acting Voter Registrar, stated quite clearly, “Fraud exists period” and came with documentation of 381 detailed cases of absentee and voter registration fraud since the year 2000 to prove it. Mr. Bettencourt expressed his concern with voter registration fraud, because as he pointed out it can go easily undetected especially in a high volume situation. Out of the 381 cases since 2000 367 of these were stopped in advance.

The first case he showed the committee involved a deputy voter registrar fraudulently submitting in her own hand writing 61 voter registration cards. She used a school list to register known people into new registrations. She pleaded guilty, received a felony conviction, was sentenced to deferred adjudication, a $500 fine, 200 hours of community service, and had to write a letter of apology.

Mr. Bettencourt also had an interesting case citing 24 examples of people who had passed away, but had voted after the dates of their deaths. This case involved a state representative who had a church member fill out 175 fraudulent registration cards with the intent of voter impersonation. One person used had died in 1983 and were still voting 13 years later. All of these registration cards were turned into to former D.A. Johnny Holmes who said they were obviously impersonating these voters, but was difficult to determine who was doing the impersonating. Mr. Bettencourt believed if Harris County had not been able to successfully detect this scam the only way to catch it would have been through some form of photo ID. He felt they were lucky to catch these cases before the election.

A topic brought into question dealt with a recent open records request by the Texas Conservative Coalition. The request asked for the number of cancellations due to citizenship status between June 1992 and March of 2007. In this time span 3,742 voter registrations had been cancelled on the basis of citizenship status. However, as Mr. Bettencourt responded the information the TCC received and the information of similar open records requests were not used in the right context. While there may be 3,742 voter registrants removed from the list because of citizenship status simply stating this number does not prove all of these registrants had a voting history nor does it take in effect the number of possible U.S. citizens mistakenly taken off the list or those registrants who were mistakenly added to the voter list by the voter registrars office itself. There are
numerous other variables that must be taken into context when looking at this number or numbers like these.

Another problem he cited which results in cancelations is Chapter 19 funding only allows for temporary workers, which result in data entry problems. Without being able to hire full time employees they will continue to have problems.

Mr. Bettencourt stated the problem with non-citizens being on the voter rolls is there is no source of information to determine one way or another. Texas operates on an honor system and possible registrants are asked to fill out voter registration cards merely checking a box indicating whether or not they are a citizen. He explained what is needed is a citizenship list, and has even testified before the Federal Government on this matter. He emphasized if voter registrars had citizenship lists from the Federal Government they would know who was eligible to vote and who was not.

Similar information was reported by the State Auditor's report on the Secretary of State's Texas Election Assistance Management System or TEAM system. However, the Auditors report cited concerns with different possible ineligible voters and in doing so found incomplete information when addressing not only citizenship status, but federal convictions as well.

The State Auditors Office (SAO) reported on potentially inaccurate voter information regarding voter lists within the TEAM system. (More detailed information on the SAO report is found in Charge No. 3 concerning TEAM.) Initially the SAO found more than 49,049 possible duplicate or ineligible voters in the voter registration system at the SOS Office. This number broken down totaled 23,114 possible felons, 23,576 possible deceased and 2,359 duplicate records. According to the SOS the "glitch" in the TEAM system creating duplicates was immediately remedied once found.46

All potential ineligible voters could not be identified by auditors because the SOS does not receive the most complete death records or felony data. Daily felony data is received from the Department of Public Safety (DPS); however, the data obtained does not include felons who were listed on earlier reports and are still serving a sentence. Similarly, the Bureau of Vital Statistics sends the SOS weekly updates of death records, but does not include deaths from earlier reporting periods.47

The SAO pointed out the SOS does not retain a comprehensive history of either felon data or death records it receives. As a result it is possible for an ineligible voter to register at a later date, and the TEAM system would not flag the record as potentially ineligible.48 While the SOS largely agreed with the SAO’s findings it did point out the SOS is almost entirely dependent on the data from DPS and the Texas Bureau of Vital Statistics because of current state law. State law also provides the counties being responsible for determining voter eligibility and for the content entered into and removed from TEAM. If changes are desired it is possible legislation may be necessary. In response to the SAO findings, the SOS wanted to also make clear, while it is important
to promptly remove illegible voters from TEAM, it is equally important to make sure eligible voters are not removed from TEAM. Lastly to remember is Texas is a Section 5 state meaning, under the Voting Rights of 1965, any changes made to the current electoral process must be submitted and approved by the U.S. Department of Justice. With these things in mind the SOS assured the SAO it would work with DPS and the Texas Bureau of Vital Statistics in an attempt to receive more complete data. SOS will also determine if there is any other Federal or State agencies able to provide information assisting the SOS in this effort.49

The SAO believes the actual number to be higher due to incomplete data in the TEAM system. Auditors could not complete additional eligibility analysis because of lack of information regarding U.S. citizenship status, persons convicted of federal felonies, and voter id information for records lacking a social security number, a Texas driver's license number or both.50

Federal conviction data is sent to the SOS, but is not in electronic format. As a result it cannot consistently identify possible ineligible voters.51 The National Voter Registration Act requires U.S. Attorneys to provide state election officials with federal felony convictions data. According to General Accountability Office reports, however, U.S. Attorneys have not been consistent in fulfilling this task.52

While the SOS receives some information on federal conviction data, auditors could not find and authoritative source of information establishing citizenship of registered voters. Auditors contacted the U.S. Social Security Administration to obtain citizenship status. The U.S. Social Security Administration stated they could not release said data and the data in question may not have current citizenship status in all cases since individuals are not required to report back to SSA when citizenship status changes.53 As the Auditor's report stated, because this data on citizenship and federal felonies is not available, a risk exists that some unidentifiable ineligible voters may retain the ability to vote.54

Measures are in place to assist the SOS in deterring voter registration applicants from knowingly submitting false information and identifying some ineligible voter who were selected for jury duty. However, the SAO believes neither of these controls is adequate enough to ensure citizenship status is accurately reported by voter applicants. The SAO even points out neither a Texas Drivers' license nor a social security card can be relied upon to establish citizenship, because both can be issued to non-citizens.55

Testimony was taken from a South Texas representative concerned by current practices. Rafael Montalvo, Election Administrator for Starr County, has been in the capacity of Election Administrator for two years. He has a combined total of 30 plus years in administration experience between the Marines and banking. When he first started he stood by to watch the system work and found discrepancies. One location requested 30-40 absentee (mail-in) ballots. The voter registration cards and absentee ballots all had different signatures. During this particular election 1500 mail-in ballots were requested 1,000 of which were turned in. In all, there were 278 signatures not matching and had to
be thrown out leaving around 800 votes to be counted. As it turned out five different people were requesting mail-in ballots. During the investigation led by the AG's office one person said she had never voted in Starr County in her life, but Starr County's records show her as having voted there for four years.

Mr. Montalvo explained citizenship issues they face during elections. Starr County is made up of two border crossings which allow the two communities between the borders to blend together. Because of the long history of these communities blending together there is no way of knowing who is a resident and who is not. There are issues with common surnames. Many people who may have the same name as another makes it difficult to figure out who should be on the voter registration roll and who should not. A problem he sees is the use of the voter registration card as an id to cross the border. Individuals may get a voter registration card for the sole purpose of crossing the border never intending to use it to vote. Doing this inflates the voter rolls and Mr. Montalvo suggests the legislature increase the amount of control over voter registration cards and how they are used.

Mr. Montalvo reported to the committee there simply is not enough data to determine who is legal and illegal in this area. When Representative Bohac asked Dennis Gonzales (County Clerk of Starr County, who accompanied Mr. Montalvo) what his confidence level was of whether or not illegal aliens were voting, Mr. Gonzales responded he had a high confidence level illegal aliens were not voting. Mr. Montalvo interjected he was not saying illegal aliens do not ever vote, but the chances are very slim compared to the chances of a legal non-citizens voting. He agreed with Mr. Bettencourt and stressed the need of a citizenship list.

Representative Bohac asked Mr. Montalvo what his confidence level were that 100% of the individuals voting in Starr County were actual U.S. citizens. He responded, with his experience in this field his confidence level was not good. Those voting may be legal non-citizens, but not U.S. citizens. He could safely say there are at least 2,000 voters who are brought to the polling place and walked through the system. His statement brought up the issue of politiquer as or vote brokers, which he said was a large problem in South Texas. Politiquer as are paid to deliver votes and purportedly do so by shepherding elderly voters to polling locations on Election Day or by manipulating the mail-in ballot system i.e., paying others to request early voting ballots by mail and having those ballots sent to post office boxes. Mr. Montalvo said some times politiquer as receive $10 dollars per voter and can make good money during the election period. The elderly targeted are individuals who do not get out much. As Mr. Montalvo explained politiquer as offer to take these elderly voters out and they get excited at the thought of having a day out to vote, get ice cream etc. In return they will vote however they are told to vote.

Eric Opiela, an attorney in Austin who not only defends against and prosecutes election contest, but also was a victim of mail-in ballot fraud, expounded on the problem of
politiqueras. He pointed out money is the root of this problem. An example of some
evidence he brought to the committee was where one candidate had reported on his Texas
Ethics report $52,000 dollars paid to various politiqueras. Another case involved a
politiquera who was formerly a district clerk who received over $11,000 in a general
election. As Mr. Opiela put it, "When you have money involved it becomes a very
lucrative business." His recommendation: make it a crime; a state jail felony or above for
anyone to accept money or pay money for the purpose of gathering mail-in ballots or
votes in general. He insisted to make the penalty a state jail felony or above because in
his experience as an attorney he believed most prosecutors would not spend their time on
misdemeanor cases. He, like the committee, does not want to make criminals out of
legitimate assists, but believes the state must take action.

Mr. Opiela had the same concern for the mail-in ballot system currently in place. As the
sub-committee on Mail-in Ballot Integrity found through testimony from Bruce Sherbet
(Dallas County Elections Administrator), the mail-in ballot system is the most vulnerable
and once a ballot leaves the officials hands they have no control over them until the ballot
is returned. The different requirements for the mail-in ballots are what the sub-committee
found to be the reason for its vulnerability. For example, as illustrated by Mr. Sherbet at
one sub-committee hearing, a person must be deputized to register people to vote and
there are poll watchers etc. in the polling place for both early voting and Election Day.
However, when an official sends out a mail-in ballot it is just out there with no
supervision. What the committee found through testimony is mail-in ballots are currently
the most susceptible to fraud in Texas.

Mr. Opiela told the committee what the state is seeing is, he believes, a shift more to vote
fraud using mail-in ballots. He stressed there is much less accountability associated with
mail-in ballots and what people are finding out is it is a much easier and cheaper way to
win an election. He also believes there is less of a chance of someone getting caught
because the signature verification process is fraught with error. Dale Stobaugh, HQ
Section Manager of the Department of Public Safety’s Crime Lab Questioned Document
Section, did the analysis of Mr. Opiela’s case. In his race that was compromised due to
election fraud there were over 1,000 mail-in ballots determined fraudulent, 87% proved to
have signature discrepancies.

Mr. Opiela's suggestion is to take a broad look at the Election Code and close loop holes
and inconsistencies within the code. For example, he explained currently the state allows
individuals to register to vote by mail, without providing an id. If that person does not
have id they will receive a letter from the Secretary of State’s Office telling them they
were not in compliance with the law. That person can then turn around and use the letter
as a form of identification, because it is from a government official and is an acceptable
form of identification under current Texas Statute. These kinds of inconsistencies along
with improving the mail-in ballot system are issues the committee agreed need to be
addressed.

Again most believed the true problem came from absentee (mail-in) ballots and voter
registration. Dr. John Taylor, a political science professor from Rice University was not necessarily convinced with roughly the number of illegal aliens in the State of Texas that there was a massive voter fraud problem. He believed it was actually hard to get a handle on fraud being committed by illegal aliens, and does not believe there are hard working illegal aliens who are under the government radar clamoring to vote. His greater concern as a political scientist and as a citizen of Texas was with the mail-in ballot.

Looking at the prosecution rates and listening to testimony it was determined much of the “election” or “voter” fraud occurring in Texas is connected to voter registration cards and through mail-in ballots. Additionally, while there is a very small chance illegal aliens could be voting, it is likely non-citizens in parts of the State, particularly South Texas do make it on the voter rolls. It is undetermined how many of these cases are mistakes or are cases of actual fraud. Either way, as Mr. Bettencourt said, these individuals do not need to be on the voter registration lists. Regulating how a voter registration card may be used, increasing awareness of the current law, stricter enforcement of current laws, taking away incentives for politiqueras to acquire votes, and perhaps broadening the AG’s jurisdiction in election fraud cases are all ideas available for analysis as possible solutions to improve Texas’s election process.

**Voter Identification**

Every state in the United States has a voter identification program. What becomes controversial is to what degree of identification should be required for someone to vote. Twenty-three states and the District of Columbia currently have the minimum HAVA identification requirements, which state first time voters who register by mail and do not provide id verification with their registration must show id before voting; both a photo id and non-photo id are accepted. Eighteen states, including Texas, require a photo id or a non photo id for all voters going to the polls. Three states (Florida, Georgia, and Indiana) require all voters show a photo id at the poll. Voters with out proper id are offered provisional ballots. Hawaii, Louisiana, Michigan, and South Dakota request all voters show a photo id, however, if the voter does not have proper id then the voter may sign an affidavit declaring they are who they say they are and may cast a regular ballot. Kansas and Pennsylvania both require a photo or non-photo id be shown by all first time voters at the polls.57

The use of photo id at the polls is a very controversial issue amongst legislators across the United States. Opponents of these believe this form of law would suppress minority, elderly, and poor voters who may be less likely to have government ids or less likely to be able to get a government issued photo id. Proponents of these laws say photo id laws will increase overall voter confidence, prevent in person election fraud, and believe requiring a photo id at the polls will not disenfranchise voters, the overall burden being minimal and justified. Earlier this year the Supreme Court ruled in favor of an Indiana voter identification law.

The State of Indiana enacted an election law requiring citizens voting in person to present
government issued photo id, which went into effect on July 1, 2005. Petitioners of this law filed separate suites challenging the laws’ constitutionality. On January 9, 2008 the Supreme Court of the United States jointly heard Crawford Et Al. V. Marion County Election Board ET. Al together with Indiana Democratic Party Et Al. V. Rokita, Secretary of State of Indiana Et Al.. In April of 2008, the court upheld the Indiana law by a vote of 6 to 3.

Justice Stevens, joined by Chief Justice Roberts and Justice Kennedy concluded the evidence in the record did not support a facial attack on the laws validity. Justice Scalia filed an opinion concurring with the judgment in which Justice Thomas and Justice Alito joined. Justice Souter filed a dissenting opinion that Justice Ginsburg joined and Justice Breyer filed a separate dissenting opinion.

The court found the evidence in the record insufficient to support a facial attack on the statutes validity and declined to judge the law by the strict standard set for poll taxes in Harper V. Virginia Board of Elections. The court found the burden on the voters offset by the benefit of reducing the risk of fraud.

Complaints made in these cases alleged the new law substantially burdened the right to vote in violation of the Fourteenth Amendment, that it is neither a necessary nor appropriate method of avoiding election fraud; and that it will arbitrarily disenfranchise qualified voters who do not possess the required identification and will place an unjustified burden on those who cannot readily obtain such id.

While evidence by the petitioners was acknowledged by the Justices the majority of the court came to the decision; while there was the possibility of putting undo burdens on voters, those burdens were mitigated by clauses in the law allowing for exceptions for the elderly as well as for those with religious or indigent objections. These exceptions also included allowing for those voters with signed affidavits to receive a ballot, and providing photo identification to anyone using it to vote.

Justice Scalia was of the view that the premise the voter identification law might have imposed a special burden on some voters is irrelevant and should be upheld because its overall burden is minimal and justified. The conclusion was the law is a generally applicable, non-discriminatory voting regulation. The universally applicable requirements, he felt, are eminently reasonable because the burden of acquiring, possessing, and showing a free photo identification is not a significant increase over the usual voting burdens, and the States stated interests are sufficient to sustain the minimal burden. While the record contained no evidence of in-person voter impersonation actually happening at a polling place in Indiana, the court felt there is no question about the legitimacy or importance of a State’s interest in counting only eligible voters’ votes.

With this determination made by the Supreme Court, it is now up to the states themselves to decide whether or not it would be beneficial to implement a form of photo id law. As previously cited there are numerous id laws in effect with different degrees of
requirements a person must go through in order to vote at the polls.

A good example of the different views come from two different letters the committee received from two different Secretaries of State. The first letter came from the Secretary of State of Indiana, Todd Rokita, which applauded the success Indian's law has achieved. As stated in the letter, "Indiana's Voter ID law is a low-cost, common sense requirement that builds integrity in our elections. Throughout the bill-drafting process, legislators and election officials worked hard to create balance between effective legislation and a low burden of production for an individual voter. We feel that we achieved that balance."

Conversely, the second letter the committee received was from the Secretary of State of Vermont, Deborah Markowitz. She applauded her State of Vermont for having some of the least restrictive laws in the nation and was proud of their record of well-run elections. In Vermont they do not require a person to present any identification at the polls, but to simply state their names clearly so a poll worker may check their name off of the voter checklist. She said in her letter, "In Vermont we believe that voter identification requirements are an unnecessary bureaucratic barrier to voting that would cause confusion at the polls, and could prevent some people from voting. Particularly in light of the lack of evidence in Vermont that there is a problem with voter impersonation fraud, we have chosen not to require voter identification at the polls."

There is a broad spectrum of the degree of voter id requirements. Florida, for instance, graduated their identification program over the years to include photo id as the requirement to vote at the polls. Florida passed a statute in 1998 specifying voter identification to be photo id; however, voters were allowed to sign an affidavit if photo identification was not available. Then in 2005 a statute took effect in 2006 requiring all voters present photo identification at the polls. This statute took away the option of signing an affidavit to receive a ballot. Florida's most recent statute removed buyers' club cards and employee badges from the list of acceptable forms of voter identification. It is important to note that the State of Florida, like Texas, is a Section 5 state. This means all voting laws must be preapproved by the United States Department of Justice before enacted as a result of the 1965 Voting Rights Act.61

There are many different views regarding the use of photo id as a voter identification tool; however, after listening to testimony proponents and opponents could both agree since these laws are relatively new there still is very little data out there to make any real conclusions one way or the other.

Testimony from David Muhlhausen, Ph.D., a senior policy analyst for the Heritage Foundation, discussed with the committee the missing elements from court cases out of Indiana and Georgia concerning the use of photo id. He believed the element was opponents of the voter photo id could not bring a single person to testify who was prevented from voting and stated right now there was very little evidence suggesting voter id laws actually suppress the vote. He added there actually isn't enough information or studies done to determine one way or another.
Another example of differing view is between the Eagleton Institute Study and Dr. Muhlhausen's more recent study. The Eagleton study was a cross sectional comparison of state voter id laws in 2004. This study reported that in 2004 voters were less likely to vote with stronger voter id laws.

Dr. Muhlhausen's study looked into the effects of voter id suggesting voter id laws do not negatively affect voters as previously reported in the Eagleton Institute Study. Dr. Muhlhausen replicated the findings of the Eagleton Institute because he found it had misclassified voter id laws in Arizona and Illinois, it used a one tailed statistical test instead of the more commonly accepted two-tailed statistical test, and there was no security analysis done to determine the "robustness" of the results. After recreating his study with a two-tailed statistical test Dr. Muhlhausen found voter id laws largely do not have the claimed negative affect on voter turnout based on state to state comparisons and minority respondents in states that required photo id are just as likely to report voting as are minority respondents from states only requiring voters to say their name.

Another report supporting this claim is The Effects of Photographic Identification on Voter Turnout in Indiana: A County Level Analysis. This report was done by Jeffrey Milyo, a professor in the Truman School of Public Affairs and the department of economics at the University of Missouri and among other things is a Senior Fellow at the Cato Institute in Washington, D.C. In his report he examined the change in voter turnout across Indiana counties before and after the photo id law. What Milloy found was the over all statewide turnout increased by about two percentage points after photo id. He further concluded there was no consistent evidence that counties having higher percentages of minority, poor, elderly, or less educated populations suffer any reduction in voter turnout relative to other counties. In fact the estimated effect of photo id on turnout he found was positive for counties with a greater percentage of these types of populations. The only consistent and frequently significant effect Milyo found was there was a positive effect on turnout in counties with Democratic leaning voters.

Conversely, a report done in part of the CALTECH/MIT Voting Technology project called The Effect of Voter Identification Laws on Turnout is on of many disputing the previous claims. This paper, however, does state there still is little research on the effect of voter identification on registered voters. In this paper when first looking at trends in the aggregate data, they found no evidence of reduced participation. However, using individual-level data from the Current Population Survey, they found the strictest form of voter identification requirements - combination requirements of presenting an identification card and positively matching one's signature with a signature either on file or on the id card, as well as with requirements to show picture id - have a negative impact on the participation of registered voters relative to the weakest requirement of just stating ones name. There was evidence found that the stricter statutes depress turnout to a greater extent for the less educated and lower income populations, but has no racial differences. Increasing the strength of requirements, on average, was found to decrease the probability of turning out the vote. In addition the study saw the stricter
requirements more than merely presenting a non-photo identification card-are significant negative burdens on voters, relative to a weaker requirement, such as merely signing a poll book. This study concluded by stressing the need for further research, because there is so little information in current data on photo identification requirements and only with the passage of time will analysts be able to build up larger data bases with more information on the behavior of registered voters in statutes with different voter identification requirements.

Another study done by Timothy Vercellotti and David Anderson of Rutgers University examined the effects these varying requirements as well. This study, Protecting the Franchise, or Restricting It? The Effects of Voter Identification Requirements on Turnout, hypothesize as the level of proof becomes more costly to the voter, turnout declines. They test the hypotheses using aggregate measures of turnout at the state and county levels in the 2004 Presidential election, as well as individual-level data drawn from the Voter Supplement to the November 2004 Current Population Survey.

This study found when comparing requirements of a photo id vs. simply stating ones name voters in states requiring photo identification were 2.9 percent less likely to vote than voters in states where the requirement was to state ones name. Voters with less than a high school diploma, the probability of voting were 5.1 percent lower in states requiring photo identification than those stating only name. Interestingly, white voters were 3.7 percent less likely to vote in photo id state than those stating ones name.

When comparing the use of non-photo identification vs. stating ones name the predicted probability Hispanics would vote in states requiring non-photo id was about 10 percentage points lower than in states where only the name was given. The difference was about 6 percent for African-Americans and Asian-Americans and around 2 percent for white voters (the gap widened to 3.7 percent for white voters when comparing photo identification to simply stating one’s name).

These reports were not the only ones citing similar findings presenting their case against voter photo id. Others included Citizens Without Proof from the Brennan Center for Justice at NYU School of Law, the brief for AMICI CURIAE Current and Former Secretaries of State in Support of Petitioners in Crawford vs. Marion County, The Suppressive Effects of Voter ID Requirements on Naturalization and Political Participation by John Logan and Jennifer Darrah of Brown University and The Disenfranchisements of Latino, Black and Asian Voters by Matt A. Barreto, Stephen Nuno and Gabriel Sanchez.

Justin Levitt, who is counsel for the Democracy Program at the Brennan Center for Justice, along with a panel of out of state guests talked to the committee on issues concerning the use of photo id at the polls. He cited excerpts from his report The Truth About Fraud to uphold his view of why proposed solutions of photo identification are not better than the problem presented. Mr. Levitt stated many see repeatedly claims of fraud happening which turn out to be clerical error or confusion rather than fraud. In his report
he gives such an example from a Washington Post article by Greg Palast titled *The Wrong Way to Fix the Vote*. An Alan J. Mandel who had passed away was alleged to have voted in 1998; upon further investigation, Alan J. Mandell (two "l"s) who was in fact very much alive and voting at the time, explained the local election workers simply checked the wrong name off of the voter list. Many assume, he continued, voter registration fraud leads to voter fraud when a vast majority of those cases reveal persons never attempt to vote as others.

Another issue brought up was that in order to get an identification one must show another form of identification. This costs money, money some do not have. Despite the claims that getting a voter id is un-burdensome, he stated, it is a common misconception everyone has id. He believes photo id would increase voter confidence for those who have id, but for those who do not confidence will diminish.

Tova Wang, a representative from Democracy Fellow on the out of state panel, stressed not one case brought up by the Department of Justice concerning voter fraud was of the type she believed would have been prevented by a voter photo identification requirement. When she was contracted by the Election Assistance Commission to do a report on election fraud and co-authored with a conservative co-author she found most fraud happens outside of the polling place and stressed the voter registration lists are the most important tools in removing possible fraudulent voters. She suggested the state should spend its energy on voter education and other alternatives to voter id; i.e. comparison of poll worker lists, poll worker training, enforcement of criminal laws currently in place in Texas, and giving law enforcement more resources. She also believes it is better to use signature verification as a form of fraud prevention.

She was not the only person bringing up the suggestion of signature verification as a means of election or voter fraud prevention. Opponents and proponents alike brought up the idea of a signature verification process in order to track voters of possible fraud. However, there was earlier testimony challenging these suggestions.

Dale Stobaugh, the HQ Section Manager of the Department of Public Safety's Questioned Document Crime Lab Section and someone who has had a long history in voter fraud cases, stated typically voter fraud cases are not good forensic cases. The reason being one does not have access to named individuals from whom the department can acquire from either a court order or a persons own submission known writing samples. The problem being going into a voter fraud case it is already known the victim did not sign the ballot or voter registration card. The burden is finding who did.

In Mr. Stobaugh's written testimony he stated, "Handwriting comparison is not the optimum method for routine personal identification, because we cannot access a known standard of writings of what often is an indeterminate number of unknown, unnamed voters and canvassers. If the investigation of a voter fraud case results in a need for forensic handwriting comparison, optimum results are developed only through adequate, comparable standards of this indeterminate number of subjects. This task is most often
exceedingly difficult to accomplish, primarily because you never know who all the actors are, especially without the biographical information as suggested.” Mr. Stobaugh suggested requiring a hand printed name and signature on each voter registration certificate issued. These samples would be maintained as a digital image for future forensic comparison.

The other issue he brought up against signature verification was hand writing is not like a fingerprint. Handwriting is not static, it changes constantly. When examining these cases a large amount of writing samples are needed to detect discrepancies. As Mr. Stobaugh stated, “Generally we don’t feel that we should rely on handwriting for routine after the fact voter identification, it’s too complicated and requires too much evidence and is too time consuming for this specific application.” For investigative purposes he suggested on sight voter proof of identity or using on the spot comparisons such as thumbprints or identification.

Opponents of photo identification legislation brought up important concerns when considering this sort of law. Even if new photo ids are free, voters will have to apply for these ids at a Department of Public Safety facility. How many DPS facilities are there and are they easily accessible to voters? Another issue raised is once a photo id is required the state will run the risk of having to catch fraudulent ids. This in turn may require poll workers to acquire special fraudulent document training in order to properly differentiate between real and fraudulent ids. As stated by DPS representatives, the technology is available to produce very good fraudulent ids, and on the street there can be anywhere from one to several hundred fraudulent ids confiscated each night. (The committee had the pleasure of having two DPS officers from the Driver’s License Division testify at the committee’s Poll Worker Training hearing in regards to the proper training needed to identify fraudulent ids. A more thorough discussion of this topic is in Charge No. 4 of this report.)

The cost of the id is also a factor. In order to keep any legislation constitutional the proposed law would have to provide free ids to anyone who was to use it for the purposes of voting. According to DPS Drivers License Administrative Director Kim Smith, currently a state id costs 68 cents to produce. However, new enhancements are being made to the identification cards which will include many new state-of-the-art card security features making alteration and counterfeiting extremely difficult and was to be introduced in the fall of 2008. Once to the driver’s license enhancements are in place the cost will jump to 83 cents per id. These are all concerns the legislature must take seriously and must thoroughly examine these issues in detail before enacting such a law.

Other important considerations were brought up by groups including the Mexican American Legal Defense and Education Fund (MALDEF), AARP, and the Coalition of Texans with Disabilities (CTD). Bryson Smith, who represented the CTD, saw concerns with the disabled community as a possible disenfranchisement toward the disabled if not done properly. The coalition does not want a photo id law to be exclusionary and pointed out to the committee what may be considered as an inconvenience to some may be
impossibility for others. Amanda Fredrickson, with the AARP expressed concerns that some of Texas' elderly may not have the proper forms of id required to vote if a photo id is enacted. Louis Figueroa (MALDEF) laid out similar concerns and believes if a photo id bill was not carried out properly it could disenfranchise voters on the basis that some may not have photo id or documents to prove their legal status. The individuals he mentioned who might have issues receiving these documents were children adopted or born abroad, legal immigrants, and those who were born at home with the assistance of midwives. Mr. Figueroa did say he could support a photo id bill allowing individuals to sign an affidavit indicating they are who they say they are, if those individuals do not have a photo id with them when they come to the polls.

During this hearing it was found there is fraud within Texas Elections, it may not be as blatant or as rampant as past instances cited within this charges background, but it does exist in pockets within the state. There are valid concerns raised from both sides of the photo id requirement battle. Opponents say there are hardly any documented cases of in person voting impersonation at the polls and in turn should be no need for photo id. Proponents like Tina Benkiser, who is a former election judge and poll worker and is also the current chairwoman of the Republican Party of Texas, believe just because it is not documented does not mean this type of in person fraud does not exist. She remarked, "In person voter is impossible to detect at the time it occurs if no photo id is required and it is rarely detected afterwards unless an election contest occurs."

**Recommendations:**

1. The committee would like the 81st Legislature to take in consideration the recommendations offered by the Sub-committee on Mail-in Ballot Integrity. As agreed by the whole committee there is mail-in ballot fraud and those issues do need to be addressed during the upcoming session.

2. Work with county officials to improve on and keep a standardized record keeping method for voter fraud cases and prosecutions. Currently while both large and small scale cases are chronicled there is still not a broad historical record of vote fraud investigation or prosecutions because of limited and a non-standardized record keeping methods.

3. The committee believes it is important to work with county election officials, the SOS, the AG's office to reassess current criminal penalties dealing with violations of the Election Code and the enforcement of these penalties and to possibly create more awareness to the laws the State of Texas has in place.

4. Look into the possibility of broadening the scope of the AG's office jurisdiction in Election Fraud cases in terms of man power and how cases are referred to their office.

5. The problem Texas faces with *politiqueras* or "vote brokers" is an issue needing to be addressed during the 81st Session. Currently in Texas Statute there are laws prohibiting
the practice of vote buying and the coercion of voters. However, these prohibitions only apply to offenses conducted in direct relation between "campaign workers" and the voter. The Committee believes the 81st Legislature should look into ways to prevent vote brokering, including revisions to current law and more effective enforcement. Any action taken by the Legislature must not discourage lawful efforts to increase participation in our elections.

6. Having found an issue with the lack of information regarding citizenship status, the committee believes the 81st Legislature should look into how the state can receive official citizen-ship lists from the Federal Government. The committee believes it is important for the Legislature to work with the SOS and other county election officials in carrying out this recommendation. The Legislature must proceed with caution when investigating this possibility so not to disenfranchise voters.

7. To mitigate the possibility of ineligible voters becoming registered or existing on voter registration lists the committee believes the Legislature should work with the Secretary of State's Office in detecting new ways to obtain more complete data for convicted felons and death records. The committee has concerns about relying solely on the records by DPS and the Texas Bureau of Vital Statistics. In order to achieve this goal without disenfranchising eligible voters the committee recommends the Legislature also look into producing uniform rules for maintaining voting lists i.e. providing public notice of pending maintenance of voter lists, preserving previously maintained voting lists and making cancellations within voter lists publicly available. These rules should be discussed at length with county election officials and the SOS for proper implementation. The committee also strongly urges the SOS to keep a historical data of felony convictions and death records in order to keep more complete voter registration records.
Charge No. 3

Monitor the continued implementation of the federal Help America Vote Act of 2002 by the Office of the Secretary of State, specifically including the implementation of The Texas Election Administration Management System to maintain voter registration records, administer elections and execute and report election results.

Background:

In response to the voting irregularities experienced during the 2000 federal elections, President Bush signed HR 3295, The Help America Vote Act (HAVA). This legislation created many new mandates for state and local governments and authorized approximately 3.86 billion dollars in federal funding to help states meet those mandates. To date Congress has appropriated just under 3.1 billion of the 3.86 billion in funds.  

One of these mandates in particular required all states to put in place a centralized state wide voter registration system. This system in Texas is the Texas Elections Administrative Management system or TEAM. Deployment of this system first occurred in January of 2007.

This report will be broken down into two parts. The first part will cover the implementation and compliance of HAVA in the State of Texas. The second part of this report will specifically focus on the deployment of the TEAM system, its current status and its future development.

The committee staff met numerous times with the Secretary of States office to monitor both HAVA and TEAM, and received briefings keeping the committee up to date.

HAVA:

The primary allegations of voting irregularities experienced during the 2000 federal election concerned votes not being properly counted and voters being erroneously omitted from voter registration rolls, which resulted in eligible voters being turned away from the polls. To correct these irregularities HAVA set fourth new requirements for the states. Some of these requirements are:

1. Beginning 1/1/2006, the state and counties were required to work from a single, centralized, unique statewide voter registration list.

2. As of 1/1/2006, each polling place in the state must have at least one accessible voting system per polling place.
3. Instead of using the challenge voter process, voters whose names do not appear on the voter registration roll, may vote a provisional ballot, which is counted upon verification of the voter’s eligibility after the Election Day polls close.

4. A free and confidential system was developed for provisional voters to check to determine if their provisional ballot was counted.

5. New requirements for electronic voting systems, and new voter educational requirements for counties using paper ballot, central count optical scan and punch card voting systems are required as of January 2006.

6. Federal Post Card Applications are now effective for a period of TWO general federal elections, instead of the calendar year.

7. The state filed a "State Plan" (which can be viewed at http://www.sos.state.tx.us/elections/forms/stateplan0105.pdf) explaining how the state and counties will meet the new requirements.

8. The state established and maintained a state-based administrative complaint process for voters who file a sworn complaint indicating their voting rights have been violated.

9. Title VII of HAVA, which improves the voting process for military personnel requires each state to designate a liaison to responsible for disseminating information to military voters (the SOS has designated itself). It also extends the valid time period for a military citizen to receive a ballot by mail from a single application and makes it incumbent upon the Secretary of Defense to make sure all military ballots are postmarked prior to mailing.

State Plan Budget and Expenditures to Date:

As required by HAVA the state has provided roughly 8.5 million dollars in matching funds to the 192 million dollars in federal funds it has received. Additionally the state has allocated some interest earned on the funds to enhance voter education efforts. The budget and financial activity in May 2007 for the purpose areas identified in the state plan are outlined in the Table below.

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<thead>
<tr>
<th>PURPOSE AREA</th>
<th>BUDGET</th>
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55
Voting System Standards

HAVA states each state and jurisdiction must comply with the requirements of Section 301 (Voting System Standards) on and after January 1, 2006. The Secretary of States office ensured all 254 counties executed contracts for HAVA-compliant state certified voting systems prior to January 1, 2006 with an assurance all systems would be deployed before the first federal election of 2006, the 2006 March Primary. Each county could choose whatever system and combination of voting processes best suit their needs. However, each county had to have a voting device in each polling location accessible to individuals with disabilities. This requirement could be easily met by having one direct record electronic (DRE) voting terminal within each polling location or an accessible ballot marking device. Beyond this requirement a county could choose any number of combinations. For example:

* All electronic system, i.e., all DRE devices.
* Paper ballot reading devices, such as optical scan machines.
* Hand counted paper ballots or counted electronically at a central location.

However, these systems require that the county meet various voter education obligations regarding their rights under Title III of HAVA, i.e. additional voter education on the effects of over votes.

Despite the crucial time constraints Texas was able to hold a successful March Primary in 2006. This election was followed by a successful mid-term election. The most recent 2008 Primary, which had the highest turnout in Texas Primary history showed the voting systems used throughout the state, managed the volume with efficiency and accuracy while maintaining HAVA compliance.

Voter Education and Election Worker Training:

Voter Education:

Since the 2006 Gubernatorial Election was the first election cycle with all the new HAVA requirements in place the Office of the Secretary of State wanted to make sure the people of Texas were well informed of the changes. The Secretary of State launched a state wide voter education program called VOTEXAS with the goal to teach Texans about the new voting systems, inform them of their voting rights and reach out to the different communities affected by HAVA.

VOTEXAS is an awareness raising program consisting of TV, radio, print, website, and an experimental marketing vehicle to drive people to the VOTEXAS website (http://www.votexas.org) or the 800 number 1-800-252-VOTE (8683) so those people could become better educated concerning Texas elections. The website in particular includes information on how to register; polling locations; FAQs; and interactive features on how to use the electronic voting equipment. Between the launch of the program in...
January 2006 through the November election, the website received more than 200,000 visits.

As part of the grassroots outreach, there was a thirty-three foot leased tour bus traveling across the state demonstrating the electronic voting equipment. This bus toured to 146 outreach events and generated nearly 500 media stories.

VOTEXAS wanted to reach out to Texans with disabilities to make sure they knew voting in Texas would become more accessible to them. To make this goal a reality a large part of the 2006 initiative was done in conjunction with the Coalition of Texans with Disabilities. In a statewide survey, 87% of those questioned living with a disability said voting is now easier for them.71

Because of the success achieved through the 2006 initiative, former Secretary of State, Phil Wilson launched a revamped voter education program called VOTEXAS-You Count, Texas Makes Sure. earlier in 2008. This program is geared toward the most recent Presidential Election cycle and is focused on educating Texans about their rights as a voter and getting back to the basics of registration and the voting process.

The Secretary's office improved the VOTEXAS website and created revised comprehensive brochures in an effort to make Texans better prepared for the upcoming election. Leading up to the March Primary the VOTEXAS website received more than 1 million hits in a six week timeframe. So far the VOTEXAS program has used a majority of the education and training funds provided by HAVA.

The Office of the Secretary of State plans to continue its outreach through personal appearances, working with election officials, businesses, and civic organizations across the state, and through media sources leading up to the November 4, 2008 general election.72

Election Worker Training:

Before HAVA, the Office of the Secretary of State by law was required to adopt standards of training election workers; develop materials for a standardized training curriculum; and distribute the materials as necessary. With HAVA came additional training needs. In accordance to the new law the Secretary of State contracted with a company to create an online poll/election worker training program, which consists of two components. The first component instructs election workers of the polling place rules and rules on qualifying voters while the second consists of training on the new, HAVA-mandated voting machines. The training is user interactive with voice features and has a testing element to ensure election officials understand election terminology and the lessons before being able to move on to another chapter. This training program is available 24 hours a day and is free of charge.

Texas is the only state to offer a statewide online training program of this kind, but this
program is not intended to replace the personal county-level training. In 2006, the state launched its first iteration of the system. By 2008, the number of election workers trained had doubled with 7,451 election workers registered on the system, 2,881 utilized the course and 2,171 successfully completed the course.

The SOS has recently contracted with the same vendor who created the online training program to develop voting system simulation videos for each of the certified voting systems in the state. The videos will encompass the setup and operation of the voting equipment at the polling location and will be incorporated into the online training. The Secretary of State's Office anticipates this addition to the online training will increase usage quite significantly and is slated to be available prior to the 2008 presidential election.73

**Federal Audit of Texas' Administration of the HAVA Funds:**

During the summer of 2006, the Election Assistance Commission's (EAC) Inspector General (IG) conducted an audit of Texas' administration of the funds received from HAVA. Texas was the first state to receive a financial audit of these funds. The audit concluded the state must instruct the counties regarding the calculation, reporting and use of program income.

- Program income is defined as gross income received from a grant-supported activity during the grant period and includes items such as fees from the use or rental of real or personal property acquired with grant funds. In the case of the HAVA program, the grant-supported activity is the acquisition of voting systems.

Aware of the requirement the Secretary of State's office was awaiting guidance from the EAC both prior to the audit as well as during the resolution of the audit. One determination the SOS was awaiting concerned whether the EAC would allow the state to deduct costs incurred as a result of generating the program income (i.e., costs absorbed by the county attributable to providing the HAVA-funded goods and services to the local entities not charged to the local entities nor financed with HAVA funds).

After careful analysis of the logistics involved in calculating and deducting incidental costs as well as potential consequences, the Secretary of State opted to report gross program income. Reporting gross program income carries less risk because it requires fewer calculations, analyses, less documentation, and there is no penalty for over-reporting. However, if program income is underreported, that amount must be returned to the Election Improvement Fund established by the state in response to HAVA.

The Secretary of State's Office has since provided guidance to the counties and has collected the necessary data to report to the EAC. In January 2008, the EAC issued a letter to the SOS stating, "...Texas has established an adequate system to determine whether counties have realized any program income. This action resolves the audit report."74
Additional HAVA Funding:

In 2008, the United States Congress appropriated the third and, presumably, final Requirements Payments to the states. Texas qualifies for $8,267,155, which includes state matching funds of $413,358. The Secretary of State’s Office is working with state officials to secure the necessary match. The SOS anticipates amending Texas’ HAVA state plan by consolidating the budget to more accurately reflect the funding levels for each purpose area identified in the plan. This additional funding will likely be used to enhance voter registration development and operation, the voter education programs, and the election worker training programs.\(^7\)

TEAM:

Section 303 of the Help America Vote Act (HAVA) required every state to develop and maintain a statewide, centralized, interactive computerized data system housing the name and registration information of every legally registered voter in that state.\(^8\) The Secretary of State complied with HAVA by contracting with IBM and Hart Intercivic in October of 2004 to create the Texas Election Administration Management (TEAM) system. TEAM was first deployed in January of 2007 and like most new projects there were many bugs needing to be worked out. Despite much criticism of TEAM’s initial performance, former Secretary of State Phil Wilson lead the charge to make sure TEAM became an efficient and well run system.

Working closely with the counties and the State Auditors Office, the Secretary of State’s Office was able to pinpoint problem areas needing improvement and with the help of Nilior, Inc. (a systems internals expert) they were able to test TEAM in real world scenarios, pushing the system to its limits. The systems internals experts were able to tune and refine TEAM whilst testing, remedying problems as they emerged.

This part of the report will cover the State Auditor’s Report on TEAM, the TEAM Readiness Validation Test, and how TEAM performed during the 2008 Primary. It will also touch on the different duties the TEAM system provides, the TEAM Advisory Group (TAG), and will finally look at what the future holds for TEAM.

Texas State Auditor’s Report on TEAM:

During its first year, TEAM’s performance was unacceptable. The State Auditor's Office (SAO) performed an investigation on the TEAM system and presented its final report in November 2007. The report concluded the Secretary of State’s Office should improve its processes and controls within the TEAM system.

After comparing information from TEAM to data obtained from the Department of Criminal Justice and the Bureau of Vital Statistics, the SAO identified 49,049 (0.4 percent) of 12,374,114 registered voters who may have been ineligible to vote. The
auditor's office counted 23,114 possible felons, 23,576 voters who may have been deceased, and 2,359 duplicate voters. It is important to note, auditors did not identify any instances in which potentially ineligible voters actually voted during the May 12, 2007 special election. However, the SOS office does not retain a complete history of death and felon records reported during previous periods, so the voting history data in TEAM system was incomplete at the time of the audit.\textsuperscript{77}

Regarding access and security controls of the TEAM system, the auditor's office felt the SOS needed to implement additional controls to ensure it adequately protects voter registration information and the TEAM system from unauthorized access. Auditors did not identify any breaches of security, but they did notice weaknesses that should be addressed.\textsuperscript{78}

Performance testing done by an IBM contractor on behalf of the Secretary of State and statements from county officials at the time of the audit indicated while TEAM's availability was there, its performance was not. Of the 204 county voter registration offices, 52\% said TEAM did not allow them to do their job effectively. To add insult to injury, for 6 of 10 benchmarks required by the Secretary of State, the TEAM system was slower than its non-HAVA-compliant predecessor, the Texas Voter Registration System (TVRS). The SAO acknowledged the Secretary of State Office was in the process of remedying the problems associated with TEAM, but did not verify the results of the performance test.\textsuperscript{79}

The Secretary of State's Office was not pleased with TEAM's initial performance and largely agreed with each of the recommendations given to them by the SAO. The SOS agreed the current processes within TEAM should be reassessed to determine if there are better ways to identify ineligible voters, but also stressed the importance of making sure valid and eligible voters are not removed. The SOS office also reminded the SAO any changes made in how Texas conducts its electoral process will be subject to the U.S. Department of Justice for preclearance and any changes adopted must take this process into consideration.\textsuperscript{80}

The Secretary of State agreed the performance of TEAM needed to be improved, and agreed it should strengthen its procedures to ensure TEAM is further protected from external or internal threats. The SOS stressed that improvements on security can and will be made.

One immediate remedy was in response to the 2,359 duplicate voters. This was caused by a defect within the TEAM system, which was identified and fixed immediately.\textsuperscript{81} Another issue counties had was response time while using TEAM. After visiting some of the counties first hand, the Secretary of State's Office traced user complaints to their county's under-spec equipment or to the slower local networks. HAVA funds were then directed to improving some counties' IT environments specific to the TEAM system, greatly improving response time.\textsuperscript{82}
TEAM Readiness Validation Test:

At its first launch TEAM would bog down with less than 100 users online, hardly acceptable for a system required to support the State of Texas. To begin the mending process, the suppliers launched a performance improvement sub-project, at their own expense, to correct the problems. They engaged a systems internals expert (Nilior, Inc.) to tune the system over several months from April through October 2007.

In July of 2007 a Readiness Validation Test was performed in order to stress test the system. To prepare for the test dozens of real county users were asked to retain normal work loads usually entered into the TEAM system until the test was to be executed. The county users entering their retained workloads coupled with simulated user activity stressed the system as it would under the expected November election loads.\textsuperscript{83}

As Ann McGeehan (Director of Elections for the Secretary of State's Office) illustrated during the August 15, 2007 Election Law Seminar, there were four main objectives to this Readiness Validation Test.

1. To understand the TEAM limitations under an increased load.
2. To identify, analyze, and prioritize observed anomalies for resolution.
3. To run a set of real-world scenarios, simulating and election type load, to capture and analyze key system parameters.
4. To rerun the November 2006 TVRS/TEAM benchmark tests with the same load and compare results.

Each one of these objectives was met and with the systems internals experts on site while the test was being performed, they were able to pinpoint and correct anomalies, if they happened, almost immediately. The benchmark tests against the former TVRS system were rerun. Results of all testing were overall good with few issues noted for further refinements.

The table on the following page shows a summary sample for Add, Cancel, and Edit voter transactions with the results for the original TEAM November 2006 benchmark (pre-launch) and the August 2007 (post-improvement sub-project) benchmark runs.\textsuperscript{84}
In all cases, performance improved from the November 2006 benchmark tests. Performance continued to improve and the system’s stability continued to increase each month past August 2007 as further improvements were implemented.

TEAM During the 2008 March Primary:

The difference between the May 2007 election and the 2008 March primary was like night and day. The following statistics during the March Primary clearly shows the vast improvements of the TEAM system.

March 4, 2008 Texas Primary Election (2/12 - 3/4)

- There were 12,841,576 eligible voters in the TEAM database.
- Total Voter turnout (early voting + election day) for this election was 4,237,720 or 33%.
- Total Voter turnout on election day was 2,394,918 or 18.6%.
- The SOS had 672,585 page views on their websites on Election Day, with 72,463 individual visitors.
- The SOS had 384,702 public users searching on either their registration or polling place on election day (16 out of every 100 election day voters did a search on the website).
- 3000+ reports were produced in the TEAM System for counties, in the weeks leading up to the election.
- The SOS produced 720 Official Voting List reports, in one day (Friday before election, after early voting ended - the most the Secretary of State's office has ever produced in one day).
- The SOS processed 637,000 voter transactions through their offline county interface leading up to the election
- The SOS's peak county user count on Election Day was 417 (the most they have ever had live on the system)
- The SOS processed 45,000+ new voter certificates leading up to the election
- The SOS did 96,699 searches by county users on Election Day (voter lookups, etc.)

Overall, the production TEAM system in the SOS IT environment performed very well operationally for the March 2008 Primary Elections, which experienced unusually heavy demands due to the very tight Democratic race for President.\textsuperscript{85}

**Components of TEAM:**

When the Secretary of State acquired the system, it was envisioned the system would include features intricately associated with the centralized data system for voter registration information, including supporting election management, election night reporting, ballot certification and canvassing, and county jury wheel needs. New technologies such as document imaging and Geographic Information System components will also become available. Below is a general description of the key features of TEAM:\textsuperscript{86}

**Voter Registration**

- Validation of voter information
- Availability of GIS mapping and document imaging
- Statewide search capability for all county officials
- State-of-the-art reporting and query tools

**Election Management**

- Early voting management
- Reduced paperwork for counties and the state
- Polling location and poll worker management

**Jury Wheel**

- Capability to create jury summons, jury lists, and notices
- Capability to track jurors
- Capability to track jury payments and provide for donation of payment to charity

**TEAM Advisory Group (TAG):**

TAG was formed in March 2007 to provide a forum of information exchange amongst the
Office of the Secretary of State Elections Division, the county users of the system, and the suppliers of the system. The group is made up of county officials and meets regularly to review the past, present, and future of TEAM, and to advise the Office of the Secretary of State's Elections Division about matters concerning the system.

TAG provides user perspectives on form, fit, function, and features of the TEAM system, recommends priorities for enhancements to appear in future TEAM releases, represents their respective organizations, and assists the State with identifying problems. Since its formation, TAG has held eight meetings. Recent comments from the TAG membership have been generally positive regarding TEAM. The County Representatives making up TAG are as follows:

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<tr>
<th>COUNTY</th>
<th>NAME</th>
<th>TITLE</th>
<th>EMAIL</th>
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<tr>
<td>Brazoria</td>
<td>RoVin Garrett</td>
<td>Tax Assessor-Collector</td>
<td><a href="mailto:rovin@brazoria-county.com">rovin@brazoria-county.com</a></td>
<td>111 E. Locust, Ste 200</td>
<td>Angleton</td>
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<td>Comal</td>
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<td>New Braunfels</td>
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<tr>
<td>Travis</td>
<td>Tammy Rich</td>
<td>County Clerk</td>
<td><a href="mailto:tjr@texasclerk.net">tjr@texasclerk.net</a></td>
<td>101 E San Rayburn 107</td>
<td>Bonham</td>
<td>75418</td>
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<tr>
<td>Galveston</td>
<td>Cheryl Johnson</td>
<td>Tax Assessor-Collector</td>
<td><a href="mailto:cheryl.johnson@co.galveston.tx.us">cheryl.johnson@co.galveston.tx.us</a></td>
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<td>Galveston</td>
<td>77553</td>
</tr>
<tr>
<td>Hays</td>
<td>Joyce Gowan</td>
<td>Elections Administrator</td>
<td><a href="mailto:joyce@co.hays.tx.us">joyce@co.hays.tx.us</a></td>
<td>401 C Broadway Street</td>
<td>San Marcos</td>
<td>78666</td>
</tr>
<tr>
<td>Kenedy</td>
<td>Roy Ruiz</td>
<td>Elections Administrator</td>
<td><a href="mailto:kenedyeari31@hotmail.com">kenedyeari31@hotmail.com</a></td>
<td>P.O. Box 243</td>
<td>Sattie</td>
<td>78385</td>
</tr>
<tr>
<td>Midland</td>
<td>Ruth Sloan</td>
<td>Elections Administrator</td>
<td><a href="mailto:ruth.sloan@co.midland.tx.us">ruth.sloan@co.midland.tx.us</a></td>
<td>PO BOX 3434</td>
<td>Midland</td>
<td>79702</td>
</tr>
<tr>
<td>Nueces</td>
<td>Ramiro Canales</td>
<td>Tax Assessor-Collector</td>
<td><a href="mailto:ronnie.canales@co.nueces.tx.us">ronnie.canales@co.nueces.tx.us</a></td>
<td>901 Leopard Street 301</td>
<td>Corpus Christi</td>
<td>78401</td>
</tr>
<tr>
<td>Potter</td>
<td>Julie Smith</td>
<td>County Clerk</td>
<td><a href="mailto:juliesmith@co.potter.tx.us">juliesmith@co.potter.tx.us</a></td>
<td>PO BOX 9638</td>
<td>Amarillo</td>
<td>79105</td>
</tr>
<tr>
<td>Polk</td>
<td>Marion A. &quot;Bill&quot; Smith</td>
<td>Voter Registra</td>
<td><a href="mailto:marvinsmith@co.polktx.us">marvinsmith@co.polktx.us</a></td>
<td>416 N Washington</td>
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