

U.S. Election Assistance Commission
Public Meeting
Assessing the 2006 Election

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Testimony of Kevin J. Kennedy
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Chairman DeGregorio, Commissioners Hillman and Davidson:

Thank you for inviting me to share my thoughts on assessing the 2006 election. I am Kevin Kennedy and I have served as the chief election officer for the State of Wisconsin since August, 1983. Also, I am the current President of the National Association of State Election Directors (NASSED). I have had the privilege to be actively involved in many of the studies, discussions and other work following the November 7, 2000 election that culminated in the passage of the Help America Vote Act of 2002 (HAVA). I believe this provides me with a special, although far from unique, perspective on the 2006 election.

Any assessment of the 2006 elections must include the primary elections which began in March 2006 and ran through September 2006 along with runoff elections which were conducted this week. We not only need to look at where we were following the 2000 presidential election but also what we have been through to get to the 2006 elections. Ironically, November 7th was the date of the general election in both 2000 and 2006.

November 7, 2006 was the first election in which all provisions of HAVA were required to be implemented by the states and territories. Many states had a head start on some of the HAVA requirements, while others have worked out arrangements with the U.S. Department of Justice to put in place updated and accessible voting equipment or a single, uniform, official, centralized, interactive computerized statewide voter registration list following the 2006 election cycle. It is fair to assess the 2006 elections to determine if the changes mandated by HAVA were effective in empowering citizens, making the election process more transparent and providing participants in the electoral process with confidence in the integrity of the administration and final outcome of the election.

We cannot measure success by the lack of ongoing disputes over the outcome of the election. Nor should we take the post-election focus in 2004 and some of the 2006 primaries on administrative issues in several key states as an indictment of the electoral process. There are several factors that indicate a successful implementation of HAVA. However, if we examine performance at the polling place level, we will find many areas for improvement. The reality is many Election Day issues will fade away until the next election unless election officials and legislators identify and address them now.

Allow me to use Wisconsin's experience to illustrate some points of success and areas in need of improvement. I believe every state and territory can draw on similar accomplishments to show that in 2006 more properly registered voters were able to participate privately and independently using better voting equipment with confidence their votes were accurately counted than ever before.

HAVA requires each state to maintain the official voter registration list. Before HAVA only a handful of states maintained a statewide list of registered voters. This led to voters' names appearing on several different registration lists within a state and made it difficult to remove ineligible voters due to change of residence, felony conviction or death. The National Voter Registration Act added millions of names to the voter rolls, but in many cases individuals who thought they had registered properly did not show up on poll lists on Election Day. The statewide voter lists now in place eliminated duplicate registrations and ineligible voters to a large degree. Provisional ballots provided voters with the opportunity to cast a ballot, have their registration status resolved outside the hectic activity of the polling place on Election Day and have their vote counted.

We saw tremendous innovation in the development of the statewide lists. Some states built sophisticated election management and voter registration systems, while others integrated existing local voter records into a statewide list to match for duplicates and purge ineligible voters. Some lists were built in-house and others were contracted out.

In Wisconsin, we built a list of more than 3 million voters from scratch. More than 1,500 municipalities in Wisconsin had no voter registration and the remaining 350 municipalities had a hodge podge of systems ranging from a meticulously typed list to home grown computer programs developed more than 30 years ago. By the September primary election, Wisconsin was using the official state list to generate all the poll books, track voter participation and record new registrations including new registrations and address changes at the polling place on Election Day.

However, much remains to be done to fully implement the statewide voter registration system and train local election officials. The HAVA matching requirements and election management functions need to be utilized by all of our 1,851 municipalities and 72 counties. We know that with a statewide voter registration and election management system, there will be more work and responsibility for local election officials, but also more accountability. With this powerful new tool, local election officials are no longer running elections out of a shoe box.

Looking at the minutes of 4 legislative recounts following our general election, I see much still needs to be done to enhance training for poll workers as well as making voters and election officials comfortable with the new voting equipment. HAVA provided funding to replace antiquated voting equipment and set minimum standards for all new voting equipment. According to media reports more than a third of all voters used new voting equipment in 2006. In most states punch card voting devices and mechanical lever voting machines were replaced with optical scan and DRE voting devices. More importantly an entire segment of the population had the opportunity for the first time to vote privately and independently. I think every election

official can recount at least one story of an individual with a disability who joyfully expressed appreciation for the opportunity to vote secretly without assistance.

By the November 2000 election in Wisconsin we had gone from 35% of our voters using punch card equipment to one county still committed to using punch cards in future elections. By the end of 2001 that county had converted to optical scan equipment. Fifteen municipalities were still using mechanical lever voting machines in our 2006 spring elections. By the first federal election this year those relics of elections past had been replaced with optical scan voting equipment along with an accessible voting component.

In fact all 2,740 polling places in Wisconsin were equipped with an accessible voting device this fall. In a little less than half of the State's polling places an accessible ballot marking device provided privacy and independence for voters with disabilities. The remaining polling places were equipped with touch screen DRE voting devices outfitted with a voter verified paper record. More than 800 municipalities still use paper ballots, but voters and poll workers learned to appreciate the benefits of using the accessible DRE equipment. In those municipalities, more voters used the electronic equipment than voted on paper ballots. Ironically, municipalities that used optical scan equipment found that very few voters used the DRE equipment.

However, electronic voting systems have not proven to be the panacea envisioned by the drafters of HAVA. Its primary benefits are providing a fast, accurate tally of thousands of votes and making voting accessible to a broader range of voters. Questions have been raised about the accuracy and security of the DRE equipment. Academics are divided over whether or not touch screen voting is a portal for election fraud, but there seems to be a consensus that the public needs more assurance that voting equipment is accurate and secure.

In Wisconsin all DRE voting devices are required to have a voter verified paper record. We developed detailed security procedures for all electronic voting equipment to ensure that election officials could document the chain of custody of the equipment and the memory cards for all voting equipment. Wisconsin also requires closing and sealing access ports and modems during the voting process. However, the value of the paper record diminishes if it jams or is not verifiable by voters with disabilities. Those concerns are exacerbated if the paper record is the official record for recounts and election contests.

The new Voluntary Voting System Guidelines and the certification program developed by the United States Election Assistance Commission (EAC) are essential elements in restoring voter confidence. However the testing and performance of voting equipment must be a transparent and thorough process to ensure public confidence in the integrity of our elections. This will require diligence by the EAC and continuing resources from Congress. The public cloud of doubt that has been thrown over voting equipment needs to be dissipated by more information about the nature of irregularities uncovered in random audits and recounts and improved voting equipment performance.

Voting equipment vendors need to improve their product and more importantly their customer service. Vendors must improve their ability to provide ballot printing, equipment programming and maintenance services in a timely manner. From my observation, understaffed and

overcommitted vendors left many election officials without the ability to provide voting options to the electorate because of late or non-delivery of ballots and support services. Fortunately, local election officials put in long hours to get late arriving ballots and equipment to the polling place.

The election community will need more resources to pay vendors to guarantee performance and service. This requires full HAVA funding and more. Additional resources are needed to properly train election officials and poll workers on the programming, set up, security, maintenance and storage of more sophisticated equipment. Too often the new voting equipment was not set up properly. Poll workers and voters were not familiar with the operation of the equipment. For example, at one Wisconsin polling place that recently added a touch screen DRE device to supplement the optical scan voting equipment, the first voter took his voter number and instead of picking up an access card, inserted the gummed paper slip into the slot for the access card. This disabled the DRE device for the rest of Election Day.

Looking back at where we were, where we are now and where we want to be, it has been a long journey from the 2000 election. The public and the media have learned more about the administration of elections, have come to expect more and now closely scrutinize the process. We have learned there are not enough financial and other resources devoted to this fundamental element of the democratic process. We have learned there certainly is not one set of solutions that can be applied to all state and local jurisdictions to address the election-related issues identified during this time. I believe we can safely say in 2006 more properly registered voters were able to participate privately and independently using better voting equipment with confidence their votes were accurately counted than ever before. Yet there is some distance to cover.

While the election community can be proud of the conduct of the 2006 elections, we cannot rest on our laurels. The high level of scrutiny under which election officials have performed since 2000 illuminates the value of a dedicated corps of citizens who as election administrators and poll workers perform an outstanding service to the public. That same scrutiny has also exposed the fact that all levels of government have not funded this endeavor at a level that enables the implementation of procedures, deployment of equipment and acquisition of human and technical resources to ensure elections can be administered efficiently and transparently. In order to secure public confidence and retain committed election professionals, we need the necessary resources to carry out the fundamental election functions integral to our democracy.

Respectfully submitted,

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