

United States Election Assistance Commission

Meeting Minutes – October 26, 2004

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Tuesday, October 26, 2004 at 10:00 a.m. at the EAC offices located at 1225 New York Avenue, N.W., Washington, DC 20005.

- Call to Order:** Chairman Soaries called the meeting to order at 10:00a.m.
- Pledge of Allegiance:** Chairman Soaries led all present in the Pledge of Allegiance.
- Roll Call:** Chairman Soaries took roll call for the Election Assistance Commission and found present Vice-Chair Gracia Hillman, Commissioner Paul DeGregorio, and Commissioner Ray Martinez.
- Adoption of Agenda:** Chairman Soaries recognized Commissioner DeGregorio, who moved to adopt the agenda for the meeting of October 26, 2004. The motion was seconded by Vice-Chair Hillman and the motion carried unanimously.
- Adoption of Minutes:** Chairman Soaries recognized Vice-Chair Hillman who moved that EAC adopt the Minutes of the Commission Meeting held September 30, 2004. The motion was seconded by Commissioner Martinez, and the motion carried unanimously.
- Updates and Reports:** Chairman Soaries first recognized Brian Hancock of the EAC staff to give an update on the status of HAVA Title II requirements payments. Mr. Hancock reported that as of the meeting date, the EAC had asked the General Services Administration (GSA) to distribute requirements payments to forty-five of the fifty-five states and territories eligible to receive them. Mr. Hancock noted that all forty-five states have received requirements payments for fiscal year 2003 totaling over \$709 million, and twenty-nine states had received payments for fiscal year 2004 totaling over \$665 million.
Mr. Hancock noted that more than \$1.37 billion had been disbursed of the more than \$2.3 billion appropriated for these payments in fiscal years 2003 and 2004. Mr. Hancock also noted that Alaska, Guam, Hawaii, Illinois, New York, Oklahoma, Puerto Rico, South Dakota, Utah and the Virgin Islands had received no requirements payments as of the meeting date.

Chairman Soaries next recognized EAC General Counsel Juliet Thompson to give an update on election related court cases. Ms. Thompson first summarized two separate Florida cases of *The Florida Democratic Party v. Glenda E. Hood*. In the first case, the Plaintiff sued challenging the authority of the Secretary of State to reject voter registration applications when the applicant failed to respond to the citizenship question. The Court found that the Plaintiff lacked standing in this instance and did not decide the merits of the case. In the second case, the Plaintiff sued alleging that the state practice of refusing to issue or count provisional ballots when the voter was not in the correct precinct violated the Help America Vote Act (HAVA). The court found that the provision did violate HAVA, but also found that the state can determine that the ballot need not be counted if the voter is in the wrong precinct and is therefore ineligible. In *Emma Yaiza Diaz et al, v. Glenda Hood, Secretary of State, et al*, the Plaintiffs sued challenging the authority of the defendants (SOS and 5 Supervisors of Election) to refuse to process voter registration applications when the citizenship question, the felony question, the mental capacity question, or the ID number question was blank or unanswered. The Court dismissed this case stating that the defendants did not have standing to make their claim.

Ms. Thompson next summarized the Ohio case of *The Sandusky County Democratic Party, et al, v. J. Kenneth Blackwell* in which the Plaintiff sued challenging a directive by Mr. Blackwell that instructed poll workers to refuse a provisional ballot to a voter who was in the wrong precinct, and to refuse to count any such ballots cast. The Court found that the directive violated HAVA and issued an injunction against the directive and ordered a new directive to count provisional ballots for such voters. The case was appealed to the Sixth Circuit Court and consolidated with a similar case from Michigan (*Bay County Democratic party and Michigan Democratic Party v. Terri Lynn Land and Christopher M. Thomas*) The Sixth Circuit affirmed in part and reversed in part the lower court ruling. The Sixth Circuit Court found that the voter should be offered a provisional ballot, but that the ballot should not be counted when the voter is in a precinct other than the one in which is registered and eligible. In another Ohio case, *Lucas County Democratic Party and Ohio Democratic Party v. J. Kenneth Blackwell*, Plaintiffs sued alleging that refusing to process voter registrations lacking a response to the voter ID number question violates the National Voter Registration Act (NVRA). The Court denied the Plaintiffs request for an injunction saying that there was no proof that failing to do so would cause irreparable harm. In *The League of Women Voters v. J. Kenneth Blackwell*, the Plaintiff sued challenging Mr. Blackwell's directive discussed in *Sandusky*

County, another directive regarding first time voters who register by mail. The Court upheld as proper this directive permitting persons who registered after January 1, 2003, and who did not provide ID or other proof of identification at the time of registration or voting to vote a provisional ballot.

Finally, in the Missouri case of *Claude Hawkins, et al, v. Matt Blunt, Secretary of State*, Plaintiffs sued challenging the procedure of not counting provisional ballots of persons who appear in a precinct other than their precinct of residence. The Kansas City Board of Election established an additional policy that the rule would apply when a voter was directed to the proper precinct but refused to go to that precinct. The Court upheld the rule with the application of the Kansas City policy.

Chairman Soaries next recognized Ms. Karen Lynn-Dyson of the EAC staff to give an update on the College Poll Worker Program. Ms. Lynn-Dyson reported that so far the program has created a high amount of energy and success in recruiting young people to serve at the polls. Ms. Lynn-Dyson noted that as of the meeting date, over 3,500 college students had been recruited and trained as poll workers. Ms. Lynn –Dyson was also pleased by the media coverage of the program which included coverage on MTV, major news networks and a significant amount of publicity in college hometown newspapers. Initial reports back from the grantees show effective recruitment via word-of-mouth and through political science classes, and that several grantees were developing manuals to be able to make the program a permanent activity of the institution.

Chairman Soaries recognized Ms. Diane Savoy, EAC Consulting Chief of Staff, to give a brief update on EAC staff preparations for election day. Ms. Savoy noted that the EAC will have staff on coverage from 6:00am to 11:00pm on election day, and were prepared to provide extended coverage and support in the days following the election. Ms. Savoy also noted that the staff had recently completed a series of training sessions to prepare for all election day eventualities and that EAC staff would be keeping detailed records of all phone conversations and questions during election day in order to easily track specific problems or issues related to the election.

Chairman Soaries next recognized each EAC Commissioner for a report on where they have been this year and what they will be doing on election day.

Commissioner DeGregorio reported that he had visited Illinois, New York, Delaware, Pennsylvania, New Jersey and Michigan since in 2004. Commissioner DeGregorio noted that on November 2nd, he would begin the day at 5:00am in the Bronx, New York, then travel to New Jersey, Chicago, Illinois, and finally reach St. Louis, Missouri about 6:00pm where he would observe the close of polls and the vote tally.

Commissioner Martinez reported that his travels had taken him to Maryland, New Mexico and Texas, and that he would be spending election day in Cuyahoga County, Ohio.

Vice-Chair Hillman reported that in 2004 she met with election officials in the District of Columbia, Arlington, Virginia, Kansas City, Missouri, San Francisco, CA, Florida and Ohio. The Vice-Chair stated that she would be spending election day observing the process in Los Angeles, California.

Chairman Soaries reported visiting election officials in the District of Columbia, Georgia, Utah and Arizona during 2004, and that he would be traveling to 4-5 counties in the State of Florida on November 2, 2004.

Chairman Soaries next recognized Commissioner DeGregorio, who introduced and read aloud the following resolution for **National Election Worker Appreciation Week**:

WHEREAS, on November 2, 2004, more than 1,000,000 persons will serve in the process of conducting our federal, presidential election;

WHEREAS, election workers represent every facet of our society and communities and provide a tangible link between the voting public and the election process;

WHEREAS, election workers provide an invaluable function to our country and are one of this country's most valuable resources;

WHEREAS, it is most appropriate to recognize the contribution that election workers make each time that we cast our votes;

NOW, THEREFORE, BE IT RESOLVED that the United States Election Assistance Commission, in concert with the states, counties, and election jurisdictions of the United States, proclaims the week of November 1-6, 2004 as "National Election Worker Appreciation Week."

BE IT FURTHER RESOLVED that the United States Election Assistance Commission extends its appreciation and admiration for the election workers of this country and the vital services that they perform in conducting this country's elections.

Commissioner DeGregorio moved for adoption of the resolution, Commissioner Martinez seconded to motion, and the motion passed unanimously.

Chairman Soaries introduced Ms. Carol A. Paquette as the new Interim Executive Director of the EAC, and Ms. Kay Stimson as the new Communications Director of the EAC.

Presentations:

Chairman Soaries next introduced Mr. John Tanner of the United States Department of Justice to discuss the Departments Election Observer Program. Mr. Tanner stated that DoJ was in the process of completing unprecedented preparations for the 2004 election, including 50 staff lines to take calls on election day and a telephone log form to catalog those calls. Mr. Tanner also noted that DoJ had already deployed more than 733 observers and monitors to various locations around the country, with an additional 1,100 individuals expected to participate by November 2, 2004. Mr. Tanner stated that all election monitors are career Civil Rights Division employees who are sent to areas in which DoJ has consent agreements, where there is ongoing litigation, where there is credible information of potential violations, and to Section 5 jurisdictions or to any jurisdiction ordered by Federal Courts. Mr. Tanner further noted that in the days before the election, DoJ attorneys reach out to the local minority communities and disabled communities to learn as much as possible of what might happen on election day.

Chairman Soaries next recognized Mr. George W. Foresman, Assistant Commonwealth Preparedness for Virginia Governor Mark Warner, to discuss States' Election Day Security Initiative. Mr. Foresman stated that at the suggestion of Governor Warner, his office reached out to state partner organizations including the National Governors' Association, National Association of Secretaries of State, Council of State Governments, National Association of State Election Directors and the National Emergency Managers to initiate discussions about how better to ensure that all states were working to achieve a balance in addressing security for the election process within the context of publicly stated concerns about the threat of terrorism.

Mr. Foresman noted that representatives from elections, homeland security, emergency management and public safety offices in Maryland, New Jersey, Utah, Colorado, Mississippi, New Mexico and Virginia met to discuss the issues and produced planning guidance that all states could use to guide discussions about what factors should be considered in the terms of the nexus between the electoral process and security of the homeland. Mr. Foresman went on to state that there were several assumptions that influenced the work group. First, that the election must occur as planned. Second, efforts taken by local and state officials should impede the confidence or ability of registered voters to freely cast their ballots. Third, the effort should preserve each states unique attributes while attempting to place a consistent level of transparency on discussions of security issues. Fourth, state and local officials need to develop an maintain close coordination and communication among all key players in this process. Fifth, because of the unpredictable nature of the threat, consideration was needed including the continuation of the current vague threat environment, the possibility of increased security on election day, and possible events in advance of or on election day.

Mr. Foresman admitted that he had no state-by-state analysis regarding the process of discussions in each state, but noted that anecdotal evidence suggested that the effort has done what it intended. States are working to provide adequate security measures that will not intimidate voters, including poll workers having emergency numbers for police and security officials, and some training of poll workers to watch for potential problems. Mr. Foresman stated that his own analysis in Virginia suggests that traditional approaches to election day security when combined with the added blanket of community wide security layered on since 9/11 represents the right benchmark for determining security measures. In closing, Mr. Foresman stated that we must be reminded that our initial national reactive approach to security immediately after 9/11 has been transformed into deliberate and proactive decision-making. Leaders are better equipped today to make well informed and balanced decisions, so voters should plan to go to the polls as usual and rest assured that thousands of men and women are working to make the voting experience both possible and safe.

Adjournment:

Chairman Soaries asked for a motion to adjourn the meeting.
Commissioner Martinez moved to adjourn the meeting;
Commissioner DeGregorio seconded the motion, and the motion passed unanimously. The meeting was adjourned at 11:55am.

