

**Minutes of the Public Meeting**  
**United States Election Assistance Commission**  
1225 New York Avenue, NW  
Washington, DC  
December 7, 2006

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on December 7, 2006, at the U.S. Election Assistance Commission Offices, 1225 New York Ave., NW, Washington, D.C. 20005. The meeting convened at 10:01 a.m. and adjourned at 4:03 p.m.

**PUBLIC MEETING**

**Call to Order:**

Chairman Paul DeGregorio called the meeting to order at 10:01 a.m.

**Pledge of Allegiance:**

Chairman DeGregorio led all present in a recitation of the Pledge of Allegiance.

**Roll Call:**

**EAC Commissioners**

EAC General Counsel Juliet Hodgkins called roll of the members of the Commission and found present: Chairman Paul DeGregorio, Commissioner Donetta Davidson, and Commissioner Gracia Hillman.

**Senior Staff**

Executive Director Thomas Wilkey and General Counsel Juliet Hodgkins.

**Adoption of Agenda:**

Chairman DeGregorio asked for a motion to adopt the agenda. It was agreed to move adoption of the minutes the October 26, 2006 meeting to later in the meeting after the Commissioners have a chance to fully review the minutes.

**Report of Executive Director:**

Executive Director Wilkey reported that for the most part the November General Election went smoothly. Under the subject of HAVA funding, he reported that the EAC is continuing to work to identify how much of the HAVA Section 102 funds must be returned by the 30 states that received these funds but failed to replace all of the punch card and lever machines.

Based upon info given from states the hope is that by the beginning of next summer the returned funds will be made available to all of the 55 states and territories as Title II requirements have authorized by HAVA. Within the next two weeks the EAC will send letters to states requesting corrections and clarifications where needed.

He then reported on the EAC's research and clearinghouse activities. Several studies are underway and we are looking to assign contracts on several other studies

He reported that he is hopeful that the EAC will adopt the voting system certification program today. The program will be rigorous, thorough, and transparent. If the Commissioners choose to adopt it the program will begin operation in January 2007. Regular updates will be issued on the certification program as they come.

Chairman DeGregorio then opened the floor for discussion.

## **New Business**

### **Election of Officers:**

Chairman DeGregorio moved for the nomination of new officers for the commission. Chairman DeGregorio then nominated Commissioner Donetta Davidson for Chair of the EAC.

Commissioner Hillman seconded the nomination of Commissioner Davidson as Chair.

A vote was then taken and Commissioner Davidson was unanimously elected to be the new Chair of the U.S. Election Assistance Commission. Commissioner Davidson will take over as Chair on January 3<sup>rd</sup>, 2007, for a term of one year.

No Vice-Chair was elected because neither one of the remaining Commissioners were eligible for the position.

### **Report on TGDC**

Presenter: Dr. William Jeffrey, Director of NIST and Chair of TGDC

Chairman DeGregorio introduced Dr. William Jeffrey, Director of the National Institute of Standards and Technology and Chairman of the Technical Guidelines Committee.

Dr. Jeffrey then began his presentation by noting that the TGDC just completed a two day meeting. As a result of the meeting some recent news accounts have

raised some questions regarding a report discussed at the TGDC's meeting. The report in question was a draft report prepared by staff at NIST, was designed to spur the discussion at the meeting, and did not represent a consensus view or a recommendation for either NIST or the TGDC.

In July, 2007 TGDC will deliver a new version of the Voluntary Voting System Guidelines (VVSG). VVSG 2007 will be a complete re-write of VVSG 2005. The new requirements will be more precise and clearer to vendors and labs.

The TGDC meeting this week represents the seventh meeting of the TGDC in the last two years. Several major recommendations came from the most recent meeting. These recommendations included improvements of voting systems, prohibition of wireless voting systems and improvements to usability and accessibility.

Chairman DeGregorio then opened the floor for discussion with Dr. Jeffrey.

Commissioner Davidson then clarified that VVSG 2007 will not be an immediate process. After the TGDC hands it to the EAC there are several processes that must take place before it is released. She wanted to make it clear to the public that this is not something that can be expected immediately.

### **Adoption on Fraud and Intimidation Report**

Chairman DeGregorio introduced EAC General Counsel Julie Thompson-Hodgkins to present the EAC's initial Fraud and Intimidation report for adoption by the Commission. Ms. Thompson-Hodgkins noted that in 2005 the EAC along with its Board of Advisors decided that voting fraud and voter intimidation were important topics to be studied. The study sought to determine what voting fraud and voter intimidation is and how to quantify these problems.

This study represents an initial look at what information already existed, with an eye towards developing a working definition of the terms and toward recommending methodology for future research in these areas.

Finally the report detailed recommendations made by members of the working group that were accepted in whole or in part by the staff. These recommendations included suggestions for future study of elections crimes, voter fraud, and voter intimidation.

Chairman DeGregorio then asked for a motion to adopt the Election Crimes Report as presented by the General Counsel as the EAC's final report on the initial review of fraud and voter intimidation. Commissioner Davidson moved for the motion and Commissioner Hillman seconded the motion.

Prior to the final vote on the motion Commissioner Hillman read a statement regarding the report (attached with minutes).

The report was then adopted by unanimous vote of the Commissioners.

### **Adoption of Administrative Manual for Policy and Procedures**

Chairman DeGregorio introduced Executive Director Wilkey to present the EAC's Administrative Manual for adoption. Mr. Wilkey stated that the manual will serve to guide the EAC in many areas including employee conduct, compensation, conduct rewards programs, and many other areas. The EAC is currently working with OPM to develop a training program for the manual that will begin in January of 2007. Also, the EAC is hopeful that they will be hiring a full time human resources person in the upcoming year.

Chairman DeGregorio then moved for adoption of the Administrative Manual as presented, Commissioner Hillman seconded the motion.

Chairman DeGregorio then opened the floor for discussion. After discussion the manual was adopted by unanimous vote of the Commissioners.

### **Review and Adoption of EAC Certification Manual**

Chairman DeGregorio introduced Director of Voting Systems Certification Brian Hancock and Deputy General Counsel Gavin Gilmour to present the EAC Voting System Certification Manual for adoption. Chairman DeGregorio moved for adoption of the Manual. Commissioner Hillman seconded the motion.

Chairman DeGregorio then opened the floor for discussion of the Certification Manual.

Mr. Hancock then gave a brief presentation. There were over 400 comments during open public comment period. Once the period ended EAC staff reviewed each of comments and incorporated many of them. After final review by senior staff, the draft was provided to Commissioners for review. Any comments that were not accepted into the manual were non-specific commentary on the process, or VVSG comments, or simply outside the scope of the document. The Manual presented and accompanying forms used have received initial approval from the Office of Management and Budget.

Mr. Hancock and Mr. Gilmour then briefly outlined the program manual with a broad discussion of the highlights of each chapter of the document.

Mr. Hancock then recommended to the Commissioners that the manual be adopted as presented to them today and be published in the Federal Register.

Chairman DeGregorio then opened the floor for questions from the Commission to the panelists.

### **Recess**

The meeting was recessed until 11:20.

### **Presentations: Assessing the 2006 Elections**

#### **First Panel – Election Officials**

Chairman DeGregorio then introduced the first panel to discuss the topic of “Assessing the 2006 election.” The panel consisted of Secretary Deborah Markowitz, President, National Association of Secretaries of State, Secretary of State Vermont; Mr. Kevin Kennedy, President, National Association of State Election Directors, Executive Director, Wisconsin State Elections Board; R. Doug Lewis, Executive Director, Election Center; Ms. Elizabeth “Libby” Ensley, IACREOT Director-At-Large.

Presenter:           The Honorable Deborah Markowitz, President, National Association of Secretaries of State, Vermont Secretary of State.

Chairman DeGregorio then introduced Secretary Markowitz to present to The Commission. She reported that the 2006 election was an overall success. There were problems; in some jurisdictions votes were lost, there were equipment malfunctions, and some problems with the statewide registration database. Where problems did occur State election officials have worked quickly to resolve the problems.

In General the predictions of Election Day problems were overblown. Predictions of wide spread vote problems did not materialize. New voter identification requirements did not cause the problems anticipated.

Pro-Active voter education helped curb the problems that voters were having. Hotlines and websites helped make getting information easy for the voters. Voters turned out in larger numbers than in 2002 which shows a growing trust in the system. Turnout among young voters was particularly high this year. According to a CNN exit poll 88% of voters were confident their votes would be counted accurately.

There are many challenges for the future. While most states have fulfilled their HAVA requirements there is still work to be done. Congress must fully fund HAVA in order for it to achieve its intended effect. We must work to train our poll workers better. Reports of the success of the 2006 election fulfill the Secretaries of States promise to allow every eligible American the chance to vote.

Presenter: Kevin J. Kennedy – National Association of Election Directors, Executive Director Wisconsin State Elections Board.

Chairman DeGregorio then introduced Mr. Kennedy to present to The Commission. Mr. Kennedy stated that in 2006 more properly registered voters were able to participate privately and independently with accurate equipment than ever before.

We can start by looking at the statewide voter registration system. This was the biggest challenge for states when HAVA was passed. The system provides much more accountability regarding who votes.

Most states no longer have old voting machines. 35% of voters are voting on different equipment than the years prior. The EAC is taking tremendous steps towards building the confidence of voters in these machines. Vendors need to improve the product they are offering. Most importantly the customer service needs to be improved from these vendors.

Any improvements that need to be made are going to require money. Congress is not funding HAVA as promised. The key area for successful elections is the proper training of election officials. There are not enough financial or other resources being applied to this process.

Presenter: R. Doug Lewis, Executive Director, Election Center

Chairman DeGregorio then introduced Mr. R. Doug Lewis to present to The Commission. Mr. Lewis reported that this was the most stressful election for election administrators that any of them have ever had in their working lifetime. Proper preparation and money from HAVA made this election successful. The increase in voter confidence is a clear indication that this election went well

In order to improve we have got to quit beating up on the process, and must transcend partisan politics. If Americans lose their fundamental faith in this process then we have a huge problem. We must dissect problems and see what really needs to be done. In order to do this we cannot rely only on news stories, instead we must explore the reported, documented problems.

Also, we are expecting too much from our poll workers. The knowledge requirements, language requirements, and training are all too much for our poll workers. The Election Center is going to look into how to properly train poll workers.

The development of voting system standards is an important one. The EAC Voting System Certification program is a remarkable development. We must trust the states to get these systems up to standards for what needs to be done.

Presenter: Elizabeth “Libby” Ensley, IACREOT Director-At-Large,  
Election Officials Election Commissioner.

Chairman DeGregorio then introduced Ms. Ensley to present to The Commission. She reported that in general, local election officials feel that the ultimate success of this election was private and independent voting for persons with disabilities. Also, the opportunity for voters to vote provisionally was a great step. However, local jurisdictions are still working through how to deal with these provisional votes within a deadline.

However, there are major costs beyond the purchasing of equipment that need to be funded as HAVA promised. Federal assistance is needed for funding now and in the future. Also, adequate time must be given to implement laws in order to make sure they are enforced correctly.

Local officials have requested recommendations as to the number of machines needed per voter. Local officials also indicated that UOCAVA voters and requirements were causing big problems. The EAC Quick Start management guides are very helpful but were sent out a bit late for this series of elections.

Chairman DeGregorio then opened the floor for questions from the Commission.

### **Recess**

The meeting was recessed until 1:15.

### **Second Panel – Organizations and Academics**

Chairman DeGregorio introduced the second panel to address the assessment of the 2006 election. The panel consisted of Mary G. Wilson, President, League of Woman Voters of the United States; Jonah Goldman, Director, National Campaign for Fair Elections, Lawyers’ Committee on Civil Rights; Mark (Thor) F. Hearne, II, Partner, Lathrop & Gage, L.C.; Dan Seligson, Editor, electionline.org.

Presenter: Mary G. Wilson, President, League of Woman Voters of the  
United States

Chairman DeGregorio introduced Ms. Wilson to present to The Commission. She reported that The League feels that it depends on several factors to determine how election went. First, high voter confidence is good news. Second, the League must gather information by talking to members of her organization to figure out how the election really went. Currently we are left to anecdotal evidence in order to determine how it went.

There were reports of requests for photo ID regardless of what the state law said was required to vote. There were reports of voter intimidation in Virginia. The people who experienced these problems would not have given such a positive review of the election.

There is a great deal of work to do in order to get where we want to go. The EAC must continue to play a critical role in reforming election administration. VVPAT is a popular sentiment amongst league members. The league recently adopted a resolution demanding that every system have VVPAT.

Presenter: Jonah Goldman, Director, National Campaign for Fair Elections, Lawyers' Committee on Civil Rights.

Chairman DeGregorio then introduced Mr. Goldman to present to The Commission. He reported that we are doing a good job so far, and that is because of the commitment of those involved in the election process. Most media coverage proclaimed success without looking deeper into problems that took place. We must undertake an honest assessment of what happened.

There were five major problems that were observed on Election Day: First were problems with polling place administration and voting technology. The best example of this was people waiting in line because of machines caused by poor administration. Second, were problems with restrictive voter ID requirements. Third, were deceptive practices and voter intimidation at the polling place. Fourth, was poor performing statewide voter registration systems. Finally were problems with the absentee ballot process.

Presenter: Mark (Thor) Hearne, II – American Center for Voting Rights.

Chairman DeGregorio then introduced Mr. Hearne to present to The Commission. He reported that vote fraud, voter intimidation and other concerns must be researched and studied further and that is why the EAC's study is so important.

Looking back at the 2006 Election and the work of this commission I think there are three points from Carter/Baker Commission that can be helpful in guiding our actions in the future. First, we must have current and accurate voter rolls in every state. Second, voter fraud needs to be combated. This is a real and pervasive problem that needs to be solved. This includes all forms of absentee ballot fraud which is widely considered the most prevalent form of voting fraud. Third, we need to guarantee the accurate counting of votes. Voters must have confidence that their vote will be counted. Furthering this goal, voters must have the opportunity to cast a ballot in the way that they feel comfortable. Whether it is by touch screen or paper ballot a voter should have the choice to cast a ballot

in the way they are most comfortable with. This measure alone would instill more confidence in voters across the nation.

Presenter: Dan Seligson, Editor, electionline.org.

Chairman DeGregorio introduced Mr. Seligson to present to The Commission. Mr. Seligson reported that looking back at the 2006 election there were clear winners in most areas, and chaos was not the order of the day. There were three main areas that experienced problems. First, were problems with voting systems. Second, were problems with voter identification requirements. The most significant incident of problems with voter ID laws occurred in St. Louis where the local board chairman instructed poll workers to ask for voters ID's when they checked in despite a decision by the State Supreme Court blocking the voting ID law. Finally, were problems experienced with voter registration and voter registration databases. The debut of statewide lists went largely unnoticed by the general public, and that would indicate the transition at least from a consumer end was relatively seamless. However, there were problems including statewide rolls that included dead voters and well-documented problems with electronic poll books.

Clearly, there were significant problems on Election Day, particularly in the area of voting systems, but also with check-in procedures and other aspects of election administration. As the Commission focuses on successes in many parts of the country, it's important not to overshadow some failures in others. In other words, a lot of work remains to be done.

Chairman DeGregorio then opened the floor for questions to the panel.

### **Panel 3 – Election Technology Representative**

Chairman DeGregorio introduced the third panel to present on the assessment of the 2006 election. The panel consisted of Mr. John S. Groh, Chair, ITAA, Election Technology Council.

Presenter: John S. Groh, Chair, ITAA, Election Technology Council.

Mr. Groh testified that the 2006 election placed election systems companies under unprecedented levels of scrutiny. One in three voters used new voting equipment for the first time. This increased responsibility was coupled with new federal oversight of the industry. Also, outdated state and local laws made vendors jobs increasingly difficult. High voter turnout, while a very positive thing, combined with first time users made this election the toughest to administer to date.

Strong partnership among vendors, election administrators and every other stake holders allowed people to meet HAVA deadlines. This was also the most

accessible election in history. New technology also offered a better opportunity to grasp voter intent. According to most reports the vast majority of voters who voted had a positive response.

The media coverage surrounding election gave a different impression of what happened during the election. Most of the coverage focused on the negatives not the positives of the process. The extent of factual error that occurred in the reporting was striking regarding the election. There were issues, and some of these issues were caused by machines, but with rare exceptions those issues were managed effectively and taken care of.

Chairman DeGregorio then opened the floor to The Commission for questions to the panel.

### **Correction and Adoption of the Minutes from 10/26/06**

Commissioner DeGregorio then opened the floor for comments and vote on the minutes from the last meeting. Commissioner Hillman noted that she had several corrections to the minutes, many of which were simple enough and were marked for correction. There was one place where her correction would have an implication on the statement, and that is where:

“we were talking about draft and predecisional documents are not considered final or releasable under the Freedom of Information Act, and then the paragraph went on to say a document is final only when EAC has made a decision to adopt the report, and that’s on page 3, not adopt the report as policy. So the words “as policy” would be stricken because not every report we adopt is policy.”

Commissioner Hillman then submitted her changes for the record.

Chairman DeGregorio then asked for a motion to adopt the minutes. Commissioner Hillman moved to adopt the minutes as corrected. Commissioner Davidson seconded the motion. The minutes were adopted by unanimous vote of the Commissioners.

### **Chairman’s Closing Remarks**

Chairman DeGregorio then offered a brief reflection on his year as Chairman and tenure as an EAC Commissioner (attached with minutes).

**Meeting was adjourned by Chairman DeGregorio at 4:03pm EST**