

United States Election Assistance Commission

Meeting Minutes – April 26, 2005

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Tuesday, April 26, 2005 at 10:00am in Cambridge, Massachusetts at the Massachusetts Institute of Technology, Bartos Theater, 20 Ames Street (lower level).

Call to Order: Chair Hillman called the meeting to order at 10:00 a.m.

Pledge of Allegiance: Chair Hillman led all present in the Pledge of Allegiance.

Roll Call: Chair Hillman recognized Juliet Thompson, EAC General Counsel, who called the roll and in addition to the Chair, found present Vice Chairman Paul DeGregorio, Commissioner Ray Martinez, III, and Commissioner DeForest B. Soaries, Jr.

Adoption of Agenda: Chair Hillman recognized Commissioner Soaries, who moved to adopt the agenda for the meeting of April 26, 2005. The motion was seconded by Commissioner Martinez and carried unanimously.

Adoption of Minutes: Chair Hillman recognized Vice Chairman DeGregorio who moved that EAC adopt the minutes of the commission meeting held on March 22, 2005. The motion was seconded by Commissioner Martinez and carried unanimously.

Updates and Reports: EAC Vice Chairman DeGregorio provided an update on the Help America Vote Act (HAVA) Title II requirements payments. He commented that the EAC is fortunate to have staffer Peggy Sims, who continues to do an excellent job in responding to the requests and needs of the states and territories. He also noted Commissioner Martinez works very hard to make sure the EAC is fulfilling HAVA requirements to ensure the integrity of the process and that the EAC is expediting its work to get the funding to the states.

The Vice Chairman reported that the EAC has processed \$4.1 million from funds appropriated in fiscal year (FY) 2003 and over \$148 million from FY 2004 in HAVA requirements payments to Maine, Michigan, New Jersey, South Dakota and Texas; since the last report. This disbursement brings the total requirements payments processed to \$1.9 billion out of the \$2.3 billion appropriated in FY 2003 and 2004. Fifty-two states and territories have received the 2003 requirements payments, totaling almost \$770 million. Forty-four of these also received their full 2004

requirements payments and 2 received partial 2004 requirements payments, totaling over \$1.1 billion. This leaves just over \$60 million in 2003 funds and \$389 million in 2004 funds to be disbursed to 11 states. Only Alaska, Guam and New York have not received any requirements payments. Certifications from Alaska and Guam are pending for over \$6 million in payments. Alaska has filed a statement of certification for 2003. EAC is waiting for the conclusion of a 30-day Federal Register publication before processing the certification. Guam needs to file its HAVA administrative compliant procedures as a prerequisite to receiving the 2003 and 2004 payments.

The Vice Chairman stated it is disappointing New York has not yet filed nor is there any indication it will file a certification for any of its over \$153 million in requirements payments. The state legislature recently appropriated the required 5% match and passed legislation.

The remaining outstanding balance of over \$290 million represents 2004 requirements payments not yet claimed by Alaska, California, Delaware, Hawaii, Michigan, Montana, North Dakota, Oregon and Texas. Michigan and Texas, which requested and received partial 2004 payments, based on a partial 5% match, plan to certify for the remaining funds once their states have appropriated the remainder of the 5% match. California's new Secretary of State may approach the EAC about its fiscal payments. Alaska, Hawaii, North Dakota and Oregon are seeking the required 5% match. North Dakota expects to have its match within two weeks.

Commissioner Martinez thanked Vice Chairman DeGregorio for his words of support and stated the Vice Chairman is equally as diligent in making sure states receive their money in a timely basis. He further stated the EAC has been in contact with every state that has yet to get full funds to ensure they submit their state plan for 2004, their administrative complaint procedures, or other needed documentation. The EAC is in contact with states who have not received either FY 2003 or 2004 requirements payments to try to encourage them to submit certifications and request the funds.

Chair Hillman gave an update on the EAC's Executive Director search. HAVA requires that the Commission receive recommendations of candidates from its Board of Advisors, which the EAC has received, and its Standards Board, that the EAC is waiting to receive. There are 12 applicants for the position.

Chair Hillman noted that the following people would make presentations: Dr. Hratch Semerjian and Ms. Carol Paquette.

The Chair's introductory remarks covered the procedures of EAC's Technical Guidelines Development Committee (TGDC) work on Voluntary Voting System Guidelines (VVSG); including security, accessibility, human factors and other issues. The EAC will have a 90-day comment period and hold hearings on the recommendations once it receives them from the TGDC.

Following the Chair's remarks, Dr. Hratch Semerjian, the Interim Director of the National Institute for Standards and Technology (NIST) and the Chairman of the TGDC, gave a presentation on the initial VVSG recommendations.

Dr. Semerjian reported that over the last nine months, TGDC had many meetings to organize its activities, gather information, develop technical guidelines and approve initial VVSG recommendations. By consensus 37 resolutions were adopted at TGDC's plenary meetings over the past 9 months.

The highest priority resolution topics include:

- development of requirements for a voter verified paper audit trails (VVPAT);
- accessibility and usability requirements based on current technology;
- software distribution and setup validation requirements, including use of NIST's National Software Reference Library;
- requirements for the use of wireless technology;
- a conformance clause; and
- a revised glossary.

In developing its strategy for prioritization, NIST faced two goals: first, to develop a long-term guideline by building on the strength of the 2002 VSS but changing areas that need improvement, and developing a new organization and structure; and second, to provide guidance for the 2006 election cycle, accomplished by minimizing changes to the 2002 VSS to ensure qualified systems did not need dramatic change, but also filling in gaps on accessibility and usability, how to implement VVPAT and wireless technology.

To reconcile the potentially conflicting goals two separate guidelines are being developed. One is an augmented 2002 VSS called VVSG Version 1, improves the VSS by filling in gaps, correcting errors in and responding to issues currently facing the

states. The focus of the changes is on the highest priority resolutions, human factors, security and best practices for voting officials. The Second is a redesigned Voting System Guideline, called VVSG Version 2, which will be completed later in the year.

Following Dr. Semerjian's presentation, Chair Hillman and Commissioners thanked the members of the TGDC for their hard work; thanked Craig Burkhardt, Chief Counsel for Technology for the U.S. Department of Commerce, who served as parliamentarian. The Chair acknowledged TGDC members Helen Purcell and J.R. Harding who were in the audience. The Vice Chairman thanked Dr. Arden Bement, the former director of NIST. Dr. Semerjian thanked NIST employee Mark Skall, and the people who work in the computer security area, software testing, and human factors.

Dr. Semerjian read the names off of the TGDC members:

- H. Stephen Berger
TEM Consulting, LP- Chair, IEEE SEC 38 (Voting Syst. Stds.)
Institute of Electrical and Electronics Engineers (IEEE)
Georgetown, TX
- Donetta Davidson
Colorado Secretary of State
Standards Board (EAC)
Denver, CO
- Dr. Brittain Williams
Retired professor- Kennesaw State- University of Georgia
National Association of State Election Directors (NASSED)
Tucker, GA
- Alice Miller
Director of Elections-District of Columbia
Standards Board (EAC)
Washington, DC
- Paul Craft
Florida Department of State, Voting Systems Division
National Association of State Election Directors (NASSED)
Tallahassee, FL
- Sharon Turner Buie
Director of Elections-Kansas City
Board of Advisors (EAC)
Kansas City, MO
- Dr. Ronald Rivest
Professor, MIT-Department of Electrical Engineering and
Computer Science
Cambridge, MA
- Helen Purcell
Maricopa County Recorder

Board of Advisors (EAC)
Phoenix, AZ

- Dr. Daniel Schutzer
Vice President & Director of External Standards and Advanced
Technology, e-Citi, CitiGroup
Stamford, CT
- Dr. James (“J.R.”) R. Harding
Architectural and Transportation Barrier Compliance Board
Tallahassee, FL
- Patrick Gannon
President and CEO,
OASIS
Billerica, MA
- James Elekes
Architectural and Transportation Barrier Compliance Board
North Plainfield, NJ
- Whitney Quesenbery
President-Usability Professionals' Association
High Bridge, NJ
- Ann Caldas
Director Procedures and Standards Administration
American National Standards Institute (ANSI)
New York, NY

EAC Vice Chairman Paul DeGregorio is the designated Federal officer to the EAC.

The Commissioners then asked Dr. Semerjian a series of questions. Commissioner Soaries asked for help in understanding how we can both describe this work in standards language, because of the technical process, notwithstanding the fact that the standards function as non mandatory guidelines to the states.

Dr. Semerjian responded the standards infrastructure in the U.S. as a whole is a voluntary process. Most of standards are promulgated by standard development organizations, IEEE, ASTM, ASME, and many other organizations. Standards only articulate the way to implement a particular technology. It does not promulgate any kind of a law or regulation. These are guidelines; until either EAC or states and local jurisdictions adopt them it does not become standards. Even though different terminology is used, it is very much consistent with the way standards are developed and implemented in others areas.

Commissioner Soaries responded the use of the word guidelines could cause some to believe these are not as comprehensive as

standards, but based on Dr. Semerjian's answer the process for development is the same for standards and guidelines.

Commissioner Martinez commented the EAC is not a regulatory body. If it adopts the guidelines it means that if a state wants to require national certification upon vendors who do business in their state, there are a set of guidelines for that process.

Commissioner Martinez stated that verification of a voter's intent can be achieved in different ways other than VVPAT if a state uses DRE machines; that the EAC should not endorse VVPAT as the only way for a state to verify; and that TGDC in its work product has not taken a position.

Dr. Semerjian agreed with Commissioner Martinez and stated VVPAT is one method to achieve independent verification. Other methods exist. Requirements are provided so states that choose to implement VVPAT can do it effectively.

Vice Chairman DeGregorio asked how feedback received from the public through NIST website (vote.nist.gov) has instructed NIST staff and the TGDC as they completed the work.

Dr. Semerjian commented that feedback is very important and integral to the deliberations. All of the meetings were open to public observation either face-to-face, webcast, or over conference calls. The TGDC held a 3-day hearing in September, 2004, where the public was given the opportunity to make comments and constructive criticism.

The Vice Chairman asked for the vote tally on VVSG Version 1. Dr. Semerjian stated it was unanimous, that everybody had strong opinions and expressed those opinions. But, there was also respect for other people's opinions. Most decisions were made with unanimous or very close unanimous votes.

Ms. Carol Paquette, EAC Interim Executive Director, made a presentation on EAC's procedures for reviewing VVSG Version 1. Ms. Paquette started out by thanking NIST and the TGDC for working very hard over the past nine months. Ms. Paquette then went on to say the EAC expects to receive the final version of VVSG, Version 1 no later than May 9th, the statutory deadline under HAVA. HAVA provides that the TGDC publish its initial set of recommendation in the Federal Register. Ms. Paquette went on to outline the steps for the Commissions approval.

- First, the EAC will review within one or two weeks after receipt the documents to consider if there are any modifications to be made.
- Second, as required by HAVA, the EAC Board of Advisors and Executive Board of the Standards Board will get the modified document for review.
- Third, EAC will solicit public comment (at the same time as the Boards review the document.) The EAC will:
 - Put a notice in the Federal Register for a 90-day comment period, necessary because the material is extensive and comprehensive, where the public is invited to review and comment on these guidelines.
 - Hold at least one public hearing.
 - Widely publicize the availability of the guidelines, by using a variety of means, such as:
 - Announcement on the EAC website
 - Work with election organizations, NASS, NASED, and IACREOT
 - Hold meetings with stakeholder groups
 - Make the guidelines available in electronic and hard copy.
 - Setup an e-mail address for electronic receipt of public comments.
 - Use a standard comment form to facilitate review of the comments.
- Fourth, all comments will be reviewed.
- Fifth, document will be finalized and presented to the Commissioners for a vote of adoption.
- Sixth, adopted guidelines will be published in the Federal Register.

Ms. Paquette noted that the Chair has already sent a letter to the Secretaries of State saying VVSG Version 1 is expected shortly, and a draft glossary has been disseminated. The Chair has encouraged election officials to assign a staff person to read the VVSG to ensure that the materials are fully reviewed at the state and local level.

Following the presentation the Commissioners asked questions. Commissioner Martinez clarified that EAC will receive the final initial set of recommendations from the TGDC in the next couple of weeks, by May 9th, and then the EAC begins a period of review and making modifications. That product is then officially transmitted to the Board of Advisors and the Standards Board as required by HAVA, and it will also simultaneously be published in the Federal Register to begin the 90-day public vetting period. Then the EAC will do a series of outreach and hearings required by

HAVA to solicit comments and incorporate the input into a final determination and publish that product in the Federal Register. Ms. Paquette agreed with the summary.

Vice-Chairman DeGregorio encouraged the public to make their comments known so when the Commission does finally adopt the VVSG it has the best input possible, because it sets a precedent for future changes. It is important that the EAC establish a good process for public input that can be used on Version 2.

Chair Hillman commented that the VVSG draft recommendation is a very comprehensive document replete with technical language, in addition to practical language. The Chair asked if there was a primer so community groups could zero in on sections that directly affect the voter to allow them to review relevant sections, and comment, without being intimidated by the size of the document.

Ms. Paquette answered that the EAC has received a recommendation that it post the document on its website in a manner that is easy to download selected portions. Ms. Paquette also noted the document has a good index; NIST has done a good job of indicating what material is new, modified and retained from the 2002 VVS.

Dr. Semerjian added that the document will identify parts that are new or changed; retain line numbers so people will be able to point at a specific place in the document; downloading specific sections will be helpful; it will use leveled numbering from high to low for section contents, i.e. 2.0, 2.01, 2.0.1, 2.0.1.1.

Chair Hillman agreed that the changes will help local and state election official review the document. The Chair then pointed out voters are now more aware of the importance of voting systems, equipment, and technology; and there are groups not familiar with the 2002 standards but who want to review and identify what in the proposed document protects the end user.

Dr. Semerjian responded that Commissioner Martinez has suggested outreach. He also stated NIST staff can participate in regional seminars where presentations are made and the public is given an opportunity to ask questions about the interpretation of the guidelines.

Commissioner Soaries stated that the Chair has summarized a concern about speaking to two different markets. He suggested a

“U.S.A. Today-type presentation” because reading the 2002 VSS was like reading a VCR manual.

Chair Hillman then thanked MIT for hosting the meeting. The Chair offered individual thanks to Professor Ted Selker, MIT's Director of the CalTech/MIT Voting Technology Project, for nudging her to hold the meeting and hearings at MIT; and Walter Bender, the Director of the Media Lab; and CalTech/MIT Voting Technology Project Staffers Sarah Dionne, Kevin Davis, and Paula Aguilera and Henry Holtzman. The Chair also acknowledged the presence of New Mexico Secretary of State Rebecca Vigil-Giron, who is also President of the National Association of Secretaries of State.

Commissioner Soaries offered the following closing comments about his resignation from the EAC. He said that two years ago when he received the call from the White House asking him about the appointment, he thought it was a crank call. But, from that day until now, he spent the majority of his working life on issues related to implementing HAVA, first in preparation for the FBI background check, and then for confirmation, and then for swearing in, and then for work in Washington. He accepted the invitation from the President because he thought this was important work. He thanked the other Commissioners for their work over the last 16 months; work together during the appointment process; being flexible in accepting a work stop that embraced his personal family needs of having 15-year-old twins in 10th grade. He then went on to say that when the Commissioners first came together, it had \$1.2 million as a budget and no authority to ask for more funds. But, through persistence a new Federal agency was formed. He has seen the other commissioners be carpenters, technicians, go shopping for supplies, do typing and filing; not the work people assume goes along with being a presidential appointee with Senate confirmation. No driver, no secretary, no pomp or pageantry. Without a staff the Commissioners divided up the state plans for review. At first the EAC did not even have enough money to publish the state plans, as required by law, but Commissioner Hillman worked hard to make sure someone paid to publish the plans. Last year the Commissioner visited two dozen elections. The EAC used its limited resources to convene the statutorily required Advisory Standards Board. The TGDC work started on faith because the EAC did not, at first, have the \$2.8 million it would cost. The Commissions work has been a team effort. It has been bipartisan, votes were unanimous, but not the members views. The greatest compliment received about the Commission, Commissioner

Soaries said, is from people who say I can't tell who's a Democrat and who's a Republican. Commissioner Soaries said he will be watching as the Commission adopts guidelines; appoints a new Executive Director; guides states through the process of the Statewide Voter Registration Database work; and take over the accreditation of labs and thus the certification of voting systems. The proverb that best describes the EAC is, "The journey of a thousand miles begins with one step."

Chair Hillman thanked Commissioner Soaries for his leadership over the first difficult year and said he will be missed. The EAC has wisely chosen its adventure, ruled the rides of Washington, D.C. to get through the challenges, and had many interesting times. The movie title Lemony Snicket's, a Series of Unfortunate Incidents (sic) is a good way to describe the Commissions interesting times. On behalf of all the EAC Staff the Chair told Commissioner Soaries how much he is appreciated, his passion admired and his commitment to the cause of making America once again the country the entire world wants to emulate with respect to the implementation of democracy, particularly the exercise of the franchise.

Vice Chairman DeGregorio commented on going to Commissioner Reverend Soaries's First Baptist Church Lincoln Park in Somerset, New Jersey to meet him for the first time. When the Vice Chairman arrived he could not meet with him because he was in the back room consoling a family who had just lost their father in a heart attack the day before. During the sermon the Vice Chairman saw the leadership of Commissioner Soaries and how much the several thousand people who were in attendance held him in high regard. The Vice Chairman was impressed by his ability to communicate and his fairness and his compassion for people.

The Vice Chairman then complimented Commissioner Soaries on his work during the 2004 election where the EAC wanted to provide leadership to the nation, and to provide people a better comfort level with the way elections are conducted. He said that Commissioner Soaries provided leadership on raising the level of voting system security by encouraging vendors to get involved with the NIST national software and the reference library. Commissioner Soaries also brought the need to recruit poll workers to the media's attention. As a result many polls were filled that may not have been filled. The Vice Chairman also thanked Commissioner Soaries for his friendship; everything he has done for the United States of America; and spreading the word

about the Vice Chairman's good cooking and famous meatball recipe and offered to provide pasta and meatballs anytime.

Commissioner Martinez thanked Commissioner Soaries for his substantial contributions to our great nation and his leadership during the EAC's first year. He also stated that the EAC is going to succeed or fail in its first couple of years of operation. The EAC works closely with its stakeholders and in many ways convince, not just them, but the country that there is a purpose to be served by the agency. Commissioner Soaries leadership has contributed significantly to assuring the Commission has a place at the table, not just in its first two or three years of operation, but for a substantial period of time. Commissioner Martinez also thanked Commissioner Soaries for the personal and family sacrifices he made. He also said he made a friend for a very long time and look forward to a continued service both publicly and a friendship over the years to come.

The meeting was adjourned at 11:30 am.