United States Election Assistance Commission

Meeting Minutes – September 27, 2005

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Tuesday, September 27, 2005 at 10:00am at EAC office; 1225 New York Avenue NW, Suite 1100, Washington, DC 20005.

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: Roll was called by Brian Hancock and in addition to the Chair, found present Vice Chairman Paul DeGregorio, and Commissioner Ray Martinez III, Commissioner Donetta Davidson.

Adoption of Agenda: Chair Hillman recognized Commissioner Martinez, who moved to adopt the agenda for the meeting of September 27, 2005. The motion was seconded by Commissioner Davidson 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 August 23, 2005. The motion was seconded by Commissioner Martinez and carried unanimously.

Updates and Reports: Chair Hillman welcomed Commissioner Davidson to her first EAC public meeting in Washington DC. She then asked Edgardo Cortes for an update on the Help America Vote Act (HAVA) Title II requirements payments.

Title II Requirements Payments

Edgardo Cortes reported that, to date, the EAC has disbursed a total of over $2.26 billion dollars in requirements payments and all of the fifty-five received their respective fiscal year 2003 requirements payments. Delaware recently submitted a revised state plan and Hawaii will certify shortly after the fiscal year 2004. EAC received Michigan's second request for a partial payment of their fiscal year 2004 requirements payments and Michigan is amending their state plan to account for the remaining 18.3 million in requirements payments. With the recent conclusion of a 30-day thirty-day publication period, Montana is expected to be certified shortly.

Commissioner Martinez praised EAC staff for their tremendous effort to ensure that the 2.3 billion dollars that EAC started with

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twelve or thirteen months ago is distributed. With the first payment going out around June 2004, EAC staff has worked hard, along with chief election officials of the states, primarily the secretary of states, to resolve the many questions that have arisen about the distribution of funds. Commissioner Martinez commended EAC staff and the chief election officials of the states on their cooperative and good efforts in getting this unprecedented federal monetary commitment to improving the electoral process out of the door and to all of the jurisdictions.

Vice Chairman DeGregorio asked Mr. Cortes if the revised state plans of the states presented, for instance Hawaii, designated funds to purchase new equipment. Chair Hillman interjected that the changes requested or made, for instance in Delaware, were to account for how the state used that money. Mr. Cortes replied that Delaware and Michigan's revised plans do not go towards the purchase of any new machines. On the other hand, Montana's funds are geared more towards meeting the different Title III requirements since it is using some of its money towards machines.

Vice Chairman DeGregorio stated that it is important for states to get their money as quickly as possible in order to put out their RFPs to everyone so that they can have the money to buy the equipment. The Vice Chairman stated his appreciation for the work that Mr. Cortes and Peggy Sims had done in getting the money out in an expedited manner, which, in turn, enabled the states to purchase their voting equipment.

Chair Hillman asked Mr. Cortes and her other colleagues if all the state plans included a budget that allowed interested individuals to view how HAVA funds would be spent. Mr. Cortes confirmed that this was true and verified that this information could be accessed via the state plan, the Federal Register or the state website.

Voluntary Voting System Guidelines

Chair Hillman acknowledged the tremendous effort of EAC staff and the Technical Guidelines Development Committee (TGDC) in updating the 2002 standards, as well as adding critical information on security, voter-verified paper audit trails, and other components. She noted that EAC held public meetings in New York, California, and Colorado this summer to promote the 90-day public comment period for the voting system guidelines. The Chair announced the September 30, 2005 deadline to prompt individuals in attendance to post their comments if they had not already done so.

Chair Hillman invited the first panel to come to the table: Carol Paquette, EAC Senior Manager of Special Projects; Merle King, Chair of the Computer Science and Information Systems Department at Kennesaw State University in Georgia; and Mark Skall, Chief, Software Diagnostics and Conformance Testing Division at the National Institute of Standards and Technology (NIST). Mr. King made the presentation while Ms. Paquette and Mr. Skall were available to provide additional comments and to answer questions.

Mr. King stated that Kennesaw State had accepted the task of providing technical support to EAC in the management of public comments regarding the Voluntary Voting System Guidelines (VVSG). The subsequent editing of the VVSG document would reflect the incorporation of these comments and Kennesaw State University would assist in making recommendations on editing considerations, including format style. Mr. King addressed the quantity of comments received by category, the challenges in resolving comments and a proposed procedure for resolving the use of the comments received in editing of the VVSG.

Comments were received directly from the designated EAC email address, by fax, through regular mail and some were submitted in person at public meetings. EAC staff not only analyzed comments posted on the website, but also decomposed what are called aggregated comments - large documents containing multiple comments. Each comment, regardless of how it's received or posted, was assigned a tracking number within the system to ensure that the resolution of every comment received would be known.

Comments were reviewed and categorized according to its relationship to the VVSG and then assigned a status of accepted or rejected. Over 430 comments had been received as of September 23 and the majority of them had been accepted. Rejections, most of them resulting from various EAC and at Kennesaw State staffers testing the system, were retained for documentation purposes, and most of them focused on election outcomes or election procedures and did not comment on the guidelines themselves.

Mr. King presented a detailed table of the breakdown of categorized comments received so far: Volume I - 242, Volume II – 47, General comments – 69, and Glossary – 84. The majority of the comments related to Volume I, Appendix A, and was a result of one of Mr. King's staff going through the glossary and reconciling definitions within the glossary against

HAVA definitions, against NIST definitions and against NASAD definitions.

To support the efficient resolution of these comments as the September 30 deadline nears, a broad classification scheme would be used to identify a comment as non-extensive or extensive.. Examples of non-extensive comments include spelling, typographical errors in the draft document, formatting errors, such as indentions, numbering schemes, pagination schemes, confirming definitions to authoritative sources such as HAVA and confirming correctness of references of other documents within the VVSG. Mr. King referred to Exhibit 10 as an example of extensive comments given.

Mr. King gave examples of extensive and non-extensive comments from each of the categories. To control the process of resolving and incorporating comments into the final version of the VVSG, an on-line system was developed to enable designated reviewers to access the comments as well as the recommended resolutions. The prototype assumed that KSU staff and EAC staff would be reviewers. Each change resulting from a process in the comment would require an appropriate sign-off; EAC would have final sign-off.

Chair Hillman thanked NIST for all its work and recognized the wonderful experience that EAC has had with the partnership formed with NIST. The Chair acknowledged the great working relationship with the two former directors (Dr. Bement and Dr. Semerjian), and stated that EAC was looking forward to meeting the new director of NIST, Dr. Jefferies. Chair Hillman called for any comments or questions.

Mr. Skall added that the TGDC did not feel that one could make an absolute requirement until further research was done. He believed that the "shalls" were looked at as "shoulds" and it was decided to make "should" the determining word because in some cases the technology could not be implemented in time. In other cases, he admitted it was probably a compromise. There is not only one reason why "shall" versus "should" decisions were made. It was not just one set of criteria; there were quite a few. Mr. Skall believed this issue will require a lot of thought and discussion.

Commissioner Davidson asked Mr. King if he thought that vendors were waiting until the end to submit comments. Mr. King replied that since posted comments could receive comments, he believed

that some vendors were purposefully waiting until the end to submit comments to avoid criticism by others.

Chair Hillman asked Mr. King whether or not the written testimony of any vendor received by the EAC would be posted. Mr. King replied that it would.

Vice Chairman DeGregorio thanked Madam Chair and the panel for their work, he also stated that it would be very helpful to the Commission, to EAC staff and to NIST as this process is worked through then adopted and finalized.

Vice Chairman DeGregorio stated that the comments and the drafts were being followed all over the world. While attending a conference of forty election officials, mainly from Europe, Asia, and Africa, he was surprised by the number of election folks that came up to him to say that they are following EAC's work on the guidelines and standards. The Vice Chairman reported that people in India are using electronic voting pretty extensively; they are also looking at some of the guidelines already set by EAC.

Vice Chairman asked if any of the comments received for Section 1 were specifically related to how conformance testing can be changed. Mr. King replied that he felt that it had been unbalanced. The quality of the comments in terms of specificity are generally good but in the area of security, the comments tended to address the goals of security rather than metrics that can be used in the design and testing of the system.

Vice Chairman DeGregorio stated that Mr. King's analysis revealed that over fifty percent of the comments could be asserted as extensive and he asked Mr. King if he expected difficulty with working through those comments and then giving EAC advice in working through the extensive comments and even separating the comments from themselves. Mr. King admitted that this would be challenging but many of the comments were redundant and there may be multiple comments directed toward a specific item.

Mr. King added that there was an order of importance in which the comments should be resolved. Once a definitive decision is made at a higher level, the decision cascades down, and would guide through the resolution of subordinate comments. Mr. King recommended initially working on Section 6 and Section 2 because they were the most difficult and would require the most testing.

Vice Chairman DeGregorio asked Mr. King if there was a pattern in received comments and if such a pattern was caused by any actions by EAC. Mr. King replied that EAC public meetings generated the largest traffic of emailed comments. Although it's easier for commenters to put all their comments in one document, reviewers have the difficult task of decomposing the document and then posting the comments. Vice Chairman DeGregorio was thankful for the coverage that EAC provided because it may have generated more comments, he also thanked Chair Hillman.

Commissioner Martinez's commented favorably on the preview and the proposed system to track comments from origin to resolution. Commissioner Martinez also reiterated how important the language of the proposed guidelines would be in terms of the legal and policy implications. EAC Commissioners must work with a member of NIST in the determination of the final language of the proposed guidelines.

Commissioner Martinez noted that EAC had met the requirements outlined in HAVA -- publishing the proposed guidelines in the Federal Register and providing for the opportunity for public comment on the proposed guidelines. Additionally, EAC took public testimony at the various hearings around the country, which gave the opportunity for a public hearing on the record, and received input from the EAC Board of Advisors and the Standards Board allowing them to review the guidelines and comments. Commissioner Martinez concluded by stating the comments from NIST, experts from Kennesaw State University and EAC staff would all be considered in the final decision ultimately made by the four Commissioners.

Chair Hillman asked Mr. King if he was able to determine comments made by individuals versus those submitted by an institution or an organization and if they are categorized in any way. Mr. King replied that the comments were not categorized and the vast majority had come from individuals, although some, but not all, individuals would refer to an organization in their comments. Chair Hillman added it would be helpful on the final report to be able to identify the comments submitted by people officially representing an organization or institution.

Chair Hillman asked Dr. Skall if cost or timing was a factor in regards to the language used (in reference to the usage of "should" and "shall") and if, what the market had to offer was another consideration. Dr. Skall stated yes to all of the above. The difference was that "shall" is an absolute requirement in that it

must be implemented in all systems as compared to "should", which is an optional requirement. In deciding what should be, one has to look at what is the minimum set of requirements that make an acceptable standard, the minimum set of requirements that a voting system shall have. Cost is part of it. Especially in security, it is important to look at what are the benefits, what is the probability of an attack, and what is the cost of trying to guard against that attack. Testing is also an issue because it is expensive to test to see if the requirement is met.

Chair Hillman asked the panel for an estimation of the level of effort that the EAC, along with NIST staff and Kennesaw State University, would have to do to formulate recommendations to the Commissioners about the comments received and a timeline. Ms. Paquette replied that a month would be a conservative estimate to review, discuss, examine alternatives, consult with NIST, and recommend a resolution to those comments. With an anticipated increase in comments in the next few days, including the more extensive comments from the vendors, there is a question mark as to the size of the ultimate workload.

Executive Director Tom Wilkey estimated that the impact on the work flow at the EAC would be would be a full-time process for at least two or three employees.

Chair Hillman stated that there appeared to have been a good response rate and that the submitted comments had been taken very seriously because out of 432 comments only eleven were unrelated to the guidelines. Mr. King confirmed Chair Hillman's assessment as accurate.

Chair Hillman asked Commissioner Davidson to share any observations about the outcome of the nine-month process that the TGDC invested in producing the recommendations and where it stands today. Commissioner Davidson replied that what had been gained in the past nine months has been a tremendous step forward and it would help vendors, election officials and the public. Commissioner Davidson added that she is proud to be a part of it.

Chair Hillman congratulated EAC and NIST for remaining determined to get the work done despite challenges created by the delayed appointment of EAC Commissioners and the lack of funding in 2004.

Ms. Paquette added that in the interest of maintaining the transparency and openness of this process, all of the comments

would be left up for public review during the time that NIST and EAC are doing the considerations of the comments.

EAC Research and Study

Chair Hillman stated that Executive Director Wilkey would give an update on the research and study agenda.

Executive Director Wilkey reported on an aggressive set of studies and research opportunities, many of which are either required or recommended by HAVA. Karen Lynn-Dyson - EAC Research Manager, Carol Paquette – EAC Senior Manager of Special Projects, Julie Thompson - EAC General Counsel, and several summer legal interns were all involved with completing the statements of work and getting them out. These contracts can be found on EAC's website.

Chair Hillman asked Commissioner Martinez to put the research and study projects into the context of HAVA and Executive Director Wilkey to describe how this research would benefit the voter.

Commissioner Martinez stated that Congress created EAC for many different reasons including the voting system guidelines, as well as, the development of a certification process for voting systems. But Congress also asked EAC to be a national clearinghouse of information on best practices and shared practices with regard to election administration. Congress designated EAC to perform baseline research in areas that are specified in HAVA. Since part of the EAC budget is designated for research, these various contracts are a part of the HAVA mandates.

Executive Director Wilkey stated that these various projects would address important issues such as literacy, election management guidelines, voter-oriented activities, poll worker recruitment, public access portals, voter information, and voter fraud.

Chair Hillman requested that Vice Chairman DeGregorio and Commissioner Davidson share their perspectives on how this research would help election officials.

Vice Chairman DeGregorio acknowledged that this kind of work would be very helpful because election officials today are at center stage. This work would be universal, supporting all 6,800 jurisdictions in the country, and election officials could gather information that is going to help them so they could serve voters

better. From what was learned from the 2004 election, many voters had trouble finding out where their polling place was.

Commissioner Davidson added that this research would help train and retain election officials and also assist jurisdictions in saving money since EAC would do the research. With term limits, Secretaries of State and election officials see a greater turnover of offices. This information would be valuable in years to come.

Election Day 2004 Survey

Chair Hillman introduced the Election Day 2004 Survey panel and described the survey as EAC's first attempt at collecting very specific data from states about activities conducted on 2004 Election Day. Panelists included Kimball Brace from Election Data Services (EDS) , Professor Michael McDonald from George Mason University in Virginia and Leslie Reynolds, Executive Director of the National Association of Secretaries of State (NASS).

Mr. Brace presented an overview of the survey by providing statistics on voter registration, modes of voting, absentee and provisional voting, over votes and under votes for federal offices, number of precinct polling places, and poll workers. The survey also provided information on voting equipment, including equipment failures and polling place accessibilities.

Responses were received from all state level jurisdictions except for American Samoa and Guam for the Election Day Survey and it generated information from a total of 6,568 local election administrators. Mr. Brace offered that a higher response rate would be preferable, but it was important to note that, first, this was the first time the Election Day Survey was administered. And second, participation in the survey was voluntary.

Mr. Brace added the recommendation that the EAC insure that all of the vote tallying software be required to produce a database file of the election results and basic information outlined in this report. This would allow all election administrators to analyze and audit their own returns, even produce precinct level maps of the data, and it would greatly facilitate the EAC's ongoing effort to be a true clearinghouse of election information.

Chair Hillman recognized Ms. Reynolds from NASS.

Ms. Reynolds stated that she was representing Secretary of State Sam Reed (WA) and NASS President. Ms. Reynolds

recommended that the states be allowed as much time as possible to get the information requested by EAC because often times this information is collected at the local, not state level. Also she recommended finding out if the requested information exists elsewhere.

Chair Hillman recognized Professor McDonald.

Professor McDonald cautioned about some of the statistics in the report and also added some comments. The number given in the survey of 121 million votes cast in the 2004 presidential election was actually significantly higher, about two million at least. The survey was voluntary, not all of the jurisdictions responded, so all of the data from all of the jurisdictions was not always accessible.

Chair Hillman asked Professor McDonald to explain voter drop-off.

Professor McDonald stated that drop off was the total number of ballots cast in a given election, a combination of undervotes and overvotes. As it turned out, not all people had a vote reported for president when they cast a vote. Some people decided to participate in the election but not cast a vote. Nevada is the only state that allows a category of, none of the candidates, and over 3,000 people selected this category in the 2004 election.

Vice Chairman DeGregorio asked Mr. Brace to explain what an inactive voter was. The Vice Chairman asked if the 20 states that count inactive voters were included in 177,000,000 registered voter figure that Mr. Brace reported. Mr. Brace confirmed that the 20 states were included in this figure. The Vice Chairman asked Mr. Brace to also explain who is categorized as an active voter.

Mr. Brace explained that when an election administrator makes any attempt to contact a registered voter, such as sending out a mailing, and it comes back as undeliverable, the voter is then labeled inactive.

Vice Chairman DeGregorio asked Mr. Brace if the National Voting Rights Act of 1993 caused an increase in inactives because of their requirements to not take people off the rolls. Mr. Brace replied that it did because a voter could not be purged for two federal elections under NVRA.

Vice Chairman DeGregorio commented that Arkansas counted the votes by President not by jurisdiction and there were other states

that could have used the same procedures. Mr. Brace agreed and recommended that EAC develop common definitions that everyone could recognize.

Commissioner Martinez asked Professor McDonald if the following race/ethnicity breakdown on turnout rates was accurate: 47% Hispanics, 64% African Americans, 70% Caucasians and Asian Americans in the low 40's. Professor McDonald stated that there was some validity to those numbers.

Commissioner Martinez asked Professor McDonald about the findings that jurisdictions providing early voting end up with a lower voter turnout. More specifically, when the turnout rate at the polls was added together with the early voting rates, were these jurisdictions still voting at basically the average rate as other states or is there lower turnout overall in jurisdictions that have instituted early voting?

Professor McDonald responded that if you have early voting, turnout rates tend to be less. It is all preliminary at this point, but it does bear concern and further study as to why, if it is made easier for people to vote they do not take advantage of it.

Commissioner Martinez asked Mr. Brace what the percent vote rate was with regard to jurisdictions using older systems, punch card or paper-based systems. Mr. Brace stated that over votes were more frequent in paper-based and punch card-type of jurisdictions, and more significant in central count operations. Error is five times more likely in a central count operation than in a precinct count operation.

Commissioner Martinez stated that HAVA required, as of January 1, 2006, that states who continue to use central optical scan and punch card systems must conduct voter education so voters know they are casting an over vote which will negate that vote. Mr. Brace agreed that having a device that a voter could cross check their ballot in their precinct while they were still holding the ballot is most critical.

Chair Hillman asked how the registration rate of a jurisdiction could be 103 percent. Mr. Brace responded that in North Dakota, all the voters or all persons of voting age are registered so that is 100 from that standpoint. Also, in the state of Alaska their counts of number of persons registered is, in fact, higher than their own Department of Labor's estimate for the number of voting age population in the state of Alaska. That is also the case in terms of

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the citizenship voting age. When the non-citizens are taken out of a number of those states, the percentage goes over 100 percent. This tends to happen with small jurisdictions estimates in terms of voting age can be off because they are estimates.

Chair Hillman asked for clarification on a point made by Mr. Brace in which a slide on his power point presentation referred to the relationship between changing voting equipment and citizenship. Mr. Brace replied that those jurisdictions that changed the type of voting equipment from 2000 to 2004, had a higher amount of non-citizens than the jurisdictions that didn't change their voting equipment.

Meeting was adjourned at 12:00 PM.