

Minutes of the Public Meeting United States Election Assistance Commission

1225 New York Avenue, NW
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Washington, DC 20005

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Monday, December 8, 2008. The meeting convened at 10:02 a.m., EDT. The meeting was adjourned at 3:37 p.m., EDT.

PUBLIC MEETING

Call to Order:

Chair Rosemary Rodriguez called the meeting to order at 10:02 a.m.

Pledge of Allegiance:

Chair Rodriguez led all present in the recitation of the Pledge of Allegiance.

Roll Call:

EAC Commissioners:

Acting General Counsel Gavin Gilmour called roll of the members of the Commission and found present: Chair Rosemary Rodriguez, Vice-Chair Donetta Davidson, Commissioner Gracia Hillman and Commissioner Gineen Beach. Four members were present for a quorum.

Senior Staff:

Acting General Counsel Gavin Gilmour; Executive Director Thomas Wilkey; Chief Operating Office Alice Miller

Presenters:

Alice Miller, Chief Operating Officer, U.S. Election Assistance Commission; Karen Lynn-Dyson, Director of Research, U.S. Election Assistance Commission; Sean O. Hogan, Ph.D., Deputy Project Manager, RTI International; Susannah Goodman, Director of Election Reform, Common Cause; Kurt S. Browning, Secretary of State, Florida; Douglas A. Kellner, Co-Chair, New York State Board of Elections; Christopher M.

Thomas, Director of Elections, Michigan's Office of Secretary of State;
Candice Hoke, Ph.D., Director, Center for Election Integrity, Associate
Professor of Law

Welcoming remarks

Chair Rodriguez welcomed all in attendance to the final EAC meeting for 2008, extending her commendations to the Commission for the role it played in promoting best practices for election officials, for the time that was spent on the road, on radio and in all types of media promoting voter responsibility and access, and for serving as an information resource on behalf of voters during her tenure as Chair.

Adoption of Agenda

Chair Rodriguez asked for a motion to adopt the meeting agenda as amended, moving the nomination of Chair for 2009 following the luncheon recess. Vice-Chair Davidson moved to adopt the meeting agenda as amended. Commissioner Gracia Hillman seconded the motion. The motion carried unanimously.

Celebrating America's Poll Workers

Commissioner Hillman was pleased to acknowledge and welcome the following individuals who served as poll workers both in Washington, D.C. and Virginia on November 4, 2008: Mary Heinze, Richard Tier, Nena Rollins, James Hill, John Wennersten, Lilla Midgetta, Annie Winborne, Helen Francis, Ernestine Brown, Aaron Goldstein from American University, Dorothy Anthony, Alison Prevost from American University, Don Hodgen, Linda Softli, Althea Mickowitz and Kruze Harley. The Commissioners extended their appreciation for the time, energy, commitment and talent expended by these individuals with a round of applause.

Commissioner Hillman presented and read into the record, Resolution 2008-1 National Election Worker Appreciation Week for the Commission's consideration: "Whereas, on November 4, 2008, more than one million persons served in the process of conducting our Federal 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, election workers volunteer to serve their fellow citizens with distinction and provide an invaluable service to their communities; Whereas, election workers span the generation gap from high school students to senior citizens and mirror the amazing diversity of

their communities and American society as a whole; Whereas, election workers are the backbone of American democracy and their dedicated service allows our democracy to flourish; Whereas, election workers are America's Champions of Democracy, it is most appropriate to recognize the contribution that election workers make each time 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 December 7 through 13, 2008, 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. Adopted by vote of the United States Election Assistance Commission this 8th day of December 2008 in Washington, D.C. "

Commissioner Hillman made a motion to adopt the resolution as read. Commissioner Beach seconded the motion. The floor was open for discussion at which time Chair Rodriguez, Vice-Chair Davidson and Commissioner Beach acknowledged the dedication and hard work on behalf of the poll workers. The motion carried unanimously.

Commissioner Hillman acknowledged and recognized the presence of the following three additional poll workers joining the meeting: Mfuni Jean-Jean Nyengele, Nathaniel Wilson and Mary Rose Chappel. The Commissioners extended their appreciation to these individuals through a round of applause.

Old Business

Approval of the minutes from the previous meeting

Chair Rodriguez asked for a motion to approve the minutes from the October 7, 2008, public meeting. Vice-Chair Davidson moved to accept the minutes. Commissioner Hillman seconded the motion. The motion carried unanimously.

Welcoming Remarks (Cont'd)

Chair Rodriguez was pleased to welcome Commissioner Gineen Beach to her first meeting of the EAC. Commissioner Beach provided an overview of her career working both in the elections field in the State of Maryland in addition to her duties in the House Administration Committee.

Report from the Executive Director

Executive Director Thomas Wilkey congratulated the Commission for adopting Resolution 2008-01 National Election Worker Appreciation Week and welcomed Commissioner Gineen Beach to the EAC.

Mr. Wilkey provided highlights concerning the following activities/resources that were accomplished/made available by the Commission leading up to Election Day and afterwards:

Under Election Administration, the following resources were released for election officials prior to Election Day for their utilization: A Voter's Guide that was translated into six languages, training videos on contingency planning, polling place management and making polling places accessible, four new Quick Start Guides about serving voters in long-term care facilities, provisional ballots, conducting a recount and canvassing and certifying an election. Also made available to the public and interested stakeholders were the voter information pages on EAC's website and the draft timeline on the Electoral College.

Under Research, a study on best practices for voter information websites was released which can be viewed on EAC's website under "Research, Resources and Reports," along with a list of Frequently asked Questions (FAQs) about the 2008 Election Day survey and a final draft of the survey questions.

The following recent Commissioners' statements were added to their individual web pages which are accessible under the "About the EAC" tab on its homepage: Chair Rodriguez's post-election statement thanking everyone who worked so hard to make the election a success, a statement on next steps for improving elections and a call for public input on agenda items for today's public meeting for which written testimony is being accepted until 5 p.m., and Vice-Chair Davidson's statement on Maintenance of Effort (MOE).

With regard to Testing and Certification, Mr. Wilkey reported the following: SysTest Labs was officially suspended by the Commission per the recommendation of the National Institute of Standards and Technology (NIST). A letter from SysTest requesting to cure EAC program non-compliance and their plan for doing so has been posted to EAC's website. Voting manufacturers Unisys, Premier Election Solutions and ES&S recently received approval to change test labs. CIBER, Inc was recently accredited per the recommendation of NIST. The new iteration of the requirements matrix v.5.2 was recently posted to the website, the list of voting systems applying for certification and the test labs that they are using was recently updated, two new draft test reports for the MicroVote Voting System 4.0. were recently uploaded, and EAC's replies to GAO's

recent reports on its testing and certification program have been posted to the website.

Under HAVA Funding, Mr. Wilkey reported that over the past several weeks the Office of Inspector General (OIG) issued the HAVA spending audit reports for North Carolina, Florida and Washington State. OIG's annual work plan for fiscal year 2009 along with five new advisory opinions were posted to the website. Advisory opinion requests from Indiana and New York were recently received.

The Commission conducted the following six tally votes, all of which passed unanimously, since the October 7, 2008, public meeting: Approval and filing of the Federal Advisory Committee Act (FACA) charter for the EAC Standards Board; appointing Commissioner Gineen Beach as the Designated Federal Officer to the EAC Standards Board; posting a portion of today's public meeting in which the EAC will discuss election of a General Counsel; advisory opinion and response to question regarding revolving loan fund in West Virginia; advisory opinion in response to question regarding certifications filed under HAVA Section 251(b)(2); advisory opinion in response to question regarding use of HAVA funds to replace voting system purchased with HAVA funds.

Under EAC general operations, the OIG issued two reports concerning EAC operations: An audit report of the EAC's fiscal year 2008 financial statements; and, an evaluation of the EAC with respect to the Federal Information Security Management Act. A performance and accountability report was recently posted to EAC's website.

Mr. Wilkey concluded his report by announcing that EAC recently hired its first Director of the Budget and also that applications are being accepted for the newly created position Chief Financial Officer, for which the application period closes December 19, 2008.

Questions and Answers:

Per Commissioner Hillman's request, Mr. Wilkey noted that he would provide an update on the disbursement of the 2008 Requirements Payments at a later point in the meeting.

Consideration of Draft Working Group Policy

Commissioner Hillman addressed the Commission to provide an update on the status of the draft Working Group Policy, reporting that the document has been condensed from four to two pages and that it was reviewed by staff to ensure that it conforms with both the Notice and

Public Comment Policy and the document setting forth the roles and responsibilities of the EAC. Commissioner Hillman further advised the Commission that she would be sending out the tally vote later in the week to publish the draft policy for a 30-day notice and public comment period. It was noted that the policy had originally started out to be narrowly focused on HAVA spending issues, after which the Commission concurred that it should be set up as a standing policy that will cover any number of issues the EAC will be undertaking.

New Business

Election Day 2008 Activity Report

Vice-Chair Davidson provided highlights from her travels to Wayne County, Indiana, which included a working luncheon with Secretary of State Rokita, election officials and his staff, in addition to a press interview; her travels to Kentucky which included dinner with Secretary of State Grayson along with a visitation/observation of its Board of Elections on Election Day; and, her travels to polling locations in Hamilton, Franklin and Allen Counties in Ohio, along with a meeting with Secretary of State Jennifer Brunner.

Commissioner Gineen Beach provided highlights from her travels to Bernalillo County, New Mexico, where she visited two polling locations, in addition to a warehouse where she observed absentee ballot and early vote counting tabulation, in addition to her travels to Adams and Broomfield Counties in Colorado where she visited two polling locations. Commissioner Beach also attended vote counting in Denver on Election Night and enjoyed seeing the openness in the process.

Commissioner Hillman provided impressions/observations from her travels to Florida, which encompassed stops in Miami-Dade, Broward and Fort Lauderdale, to include the following: Early voting is preferential in Florida; voters heeded EAC's message regarding the importance of registration, to know the location of their polling site and to have the proper form of identification on Election Day; the need for voter education with regard to privacy surrounding absentee ballots; poll worker training/education on how to identify/handle matters with regard to accommodating disabled voters waiting to cast their vote; and, the process that should be utilized when a voter is administratively deemed they are no longer eligible to vote. Commissioner Hillman also provided some brief comments regarding her attendance the previous week at a post-election summit that was convened by Secretary of State Brunner.

Executive Director Wilkey provided highlights from his travels to Los Angeles County, California, which included a visit to their election

headquarters, observation of their coordinated meetings, a trip to their service center, stops at several polling locations and observation of the ballot counting both on Election Night. Mr. Wilkey pointed out it was an overwhelming experience and a true testament to both America's democracy, the voters in Los Angeles and the thousands who helped in the coordination of the activities leading up to and including Election Day.

Chair Rodriguez extended an invitation to the poll workers in attendance to provide comments/observations from their activities surrounding Election Day at which time Nena Rollins, Lilla Midgetta, Jennifer Karius, Dorothy Anthony, Don Hodgen and Mfuni Jean-Jean Nyengele approached the table to provide both feedback and recommendations for future elections.

Commissioner Hillman was pleased to acknowledge the presence of poll worker Carol Collins, extending the EAC's appreciation for both her service and attendance.

Adoption of EAC's Strategic Plan

Presenter: Alice Miller, Chief Operating Officer, U.S. Election Assistance Commission

Ms. Miller expressed her appreciation to the poll workers for their hard work/volunteer spirit in addition to thanking the Commission for its foresight in adopting Resolution 2008-01 National Election Worker Appreciation Week.

Ms. Miller was pleased to present the Commission with the Draft Strategic Plan for Fiscal Years 2009 through 2014 which was reviewed by OMB, a special committee of the EAC Board of Advisors and the Executive Committee of the Standards Board, pointing out that comments/suggestions from members of the Board of Advisors were incorporated into the draft. Ms. Miller extended her sincere gratitude to Roger LaRouche with the Election Administration and Programs Unit for his time and energy in helping to coordinate, develop, organize and promote the completion of the Strategic Plan.

Ms. Miller highlighted/summarized the following five goals and objectives contained in the Strategic Plan: Communicate; Fund and Oversee; Study, Guide, and Assist; Test and Certify; and, Manage.

Ms. Miller concluded by pointing out that following a vote by the Commission to adopt the draft Plan as it is presented, it will be posted on the website for 30 days and made final at the next meeting, subsequent to the 30 days.

Questions and Answers:

In response to questions/comments by the Commission members:

Ms. Miller pointed out that although the organization chart does not reflect it currently, there is a proposal to fill the position of Chief Financial Officer in addition to the appropriate units that fall under the CFO, that any necessary modifications to the Strategic Plan can be taken up through a formal process by the Commission and that budget director Annette Lafferty, who was introduced and welcomed, is in the process of devising performance based budgeting for 2009.

Chair Rodriguez suggested that there be a plan for monitoring EAC's progress against the goals and objectives outlined in the Strategic Plan, either through staff briefings or a separate document.

Per Commissioner Hillman's observation, Ms. Miller noted that the organization chart would be adjusted to reflect the appropriate reporting requirements of the Executive Director, in addition to the fact that staff will be cognizant of the fact that the Strategic Plan and the roles and responsibilities documents do not overlap.

Commissioner Hillman made a motion to accept the report and have it published in the *Federal Register* and on EAC's website for the 30-day public comment period. Vice-Chair Davidson seconded the motion. The floor was open for discussion at which time there was a brief clarification regarding Commissioner Beach's inquiry into whether publication in the *Federal Register* is a requirement. The motion carried unanimously.

[The Commission recessed for lunch at 11:37 a.m. and reconvened at 1:02 p.m.]

New Business:

Election of 2009 Officers

Chair Rodriguez addressed the Commission to propose that consideration be given towards postponing the election of Chair for 2009 until the next meeting in order to allow time to discuss rotation, in addition to a number of other issues. Acting General Counsel Gilmour noted that the Commission could appoint the Chair and Vice-Chair via tally vote as opposed to convening the next meeting prior to the one-year expiration of Chair Rodriguez's term. Executive Director Wilkey will research when Chair Rodriguez assumed the gavel in January 2008 in order to determine when the Commission needs to either meet or vote by tally.

Update on the 2008 Election Day Survey – 2008 Election Day Survey Discussion

Presenter: Karen Lynn-Dyson, Director of Research, U.S. Election Assistance Commission

Ms. Lynn-Dyson addressed the Commission to provide a brief chronology/background on the development of the 2008 Election Administration & Voting Survey, along with the companion document, the 2008 Statutory Overview. Ms. Lynn-Dyson pointed out that the survey was published in the *Federal Register* in March 2008, that the public comment period of the survey occurred between March and May 2008, OMB granted an expedited/emergency review and clearance of the survey per a request by EAC staff due to the pending November election that was completed and OMB approval of the final version of the survey which was given in late September, after which both the survey and data templates were provided to the states in early October. Information contained in the Statutory Overview has been collected from 49 states for which it is anticipated a draft report will be forthcoming summarizing the information by late December. States were asked to complete and submit the survey to EAC by early March and it is anticipated the draft reports specifically related to the NVRA and UOCAVA portions of the survey will be ready for EAC staff review in May which will allow EAC to meet its mandate to report to Congress on NVRA in June 2009 and on UOCAVA by summer of 2009. The entire report on the findings and analysis of the survey is on track to be completed and ready for review by fall 2009.

Presenter: Sean O. Hogan, Ph.D., Deputy Project Manager, Research Triangle Institute (RTI) International

Dr. Hogan was pleased to present testimony to the Commission on RTI's progress on the 2008 Election Day Survey, which included an overview regarding the organization of RTI staff on the project, and to expound upon the two components of the survey, the Statutory Overview which is organized into three sections and covers 30 questions, and the qualitative portion which is organized into six sections and covers 835 data points.

Presenter: Susannah Goodman, Director of Election Reform, Common Cause

Ms. Goodman was pleased to present testimony to the Commission regarding the importance of reinstating questions about voting machine performance into the Election Day Survey as part of an overall effort to track and share information on voting system performance. Ms. Goodman's testimony focused on the following two points:

1. The need for a federal effort to track information on voting system performance as part of an overall program to improve elections.
2. How reinstating questions on voting system performance into the survey can be a meaningful part of that process.

Ms. Goodman recommended that EAC take the following steps, in fairly short order, in order to improve voting systems to that the public and election officials can understand performance problems and be prepared for them for which Common Cause would be willing to assist the EAC with:

- 1) Solicit information from states, perhaps using the current survey as a vehicle about those jurisdictions which currently have exemplary practices in collecting data on voting system performance and election administration.
- 2) Work with experts in the field of election administration and data collection to determine how best to craft questions and create a good survey instrument to collect data on voting system performance.
- 3) Conduct a pilot program in collecting this data during the next off cycle federal election to form questions for the 2010 survey.

Questions and Answers:

In response to questions/comments by the Commission members:

Ms. Goodman and Dr. Hogan commented on the usefulness of data that is collected well after it has been reported. Ms. Goodman provided feedback regarding how to format questions concerning voting system performance which voters are interested in knowing about, and to elaborate on the topic of what vote flipping is and who is responsible for vote flipping, which she addressed in her written testimony.

Update on the 2008 Election Day Survey – Tracking Voting System Performance

Presenter: Kurt S. Browning, Secretary of State, Florida

Secretary Browning was pleased to present testimony to the Commission regarding the following three areas that Florida has taken to track voting system performance:

1. Proactive measures which included monthly conference calls with both Supervisors of Elections and voting system vendors, traveling to the 15 counties who transitioned from touchscreen to optical scan voting equipment, attendance by the Bureau of Voting Systems Certification at the voting systems vendors' user group meetings held throughout the state, and a voting systems roundtable discussion for county IT personnel that was hosted by the Bureau of Voting Systems Certification in July 2008.
2. Election Day monitoring conducted by the Bureau of Voting Systems Certification.
3. Reporting, which includes the filing of a Conduct of Elections Report by County Canvassing Boards, implementation of a post-election audit and the filing of an overvote/undervote report with the state,

Secretary Browning also shared some brief concluding comments regarding Florida's preparations for the 2010 election.

Questions and Answers:

In response to questions/comments by the Commissioners:

Secretary Browning reported that a Conduct of Elections Report is filed, along with the official certification, following every election in Florida by the County Canvassing Board; any changes to firmware must go through the certification process and that the magnitude of the change determines the extensiveness of the certification needs to be performed; while there is no clearinghouse where reports regarding the performance of voting systems are posted the Conduct of Election Reports are available through a public records request; any new voting systems must be certified by Florida's Bureau of Voting Systems Certification; the care and custody of voting machines is maintained by the Supervisors of Elections in each of Florida's 67 counties; and, the Conduct of Elections Reports filed with the Division of Elections are kept separately as opposed to being compiled into one comprehensive report. Secretary Browning also provided input on what Florida does to motivate voting system manufacturers to invest in research and development that ensures the sustainability of their systems, including possible decertification.

Presenter: Douglas A. Kellner, Co-Chair, New York State Board of Elections

Mr. Kellner was pleased to present testimony to the Commission to point out that one of the important issues that is not repeated enough is that at present there is no voting equipment on the market that complies with all

of the current federal standards and that every local jurisdiction needs to be informed in what ways their equipment does not comply with the federal standards. Mr. Kellner's testimony also focused on the fact that EAC's authority should not be limited to only the equipment it has certified but that it needs to inform consumers and election authorities of any known discrepancies with voting equipment, giving consideration towards using the National Transportation Safety Board, the Consumer Product Safety Commission or the Food and Drug Administration (FDA) as models for how to collect, organize and report mishaps that occur to election administrators, and to endorse EAC seeking an exemption from the Paperwork Reduction Act.

Presenter: Christopher M. Thomas, Director of Elections, Michigan's Office of Secretary of State

Mr. Thomas was pleased to present testimony to the Commission regarding the following two areas:

1. The National Association of State Election Directors' (NASED) position on the addition of questions to the 2008 Election Day Survey concerning the performance of voting systems, to recommend that if EAC chooses to gather a survey of voting system performance issues that it utilize a separate instrument to achieve this goal which election officials should be involved in the design of, and to point out that extreme caution will need to be taken when constructing questions in order to avoid undercutting the high credibility that voters have in the election system.
2. The manner in which Michigan handles voting system Malfunctions, including a separate email system which allows for constant contact with all Michigan election officials, the commitment of significant resources to the training of local election officials on all aspects of election administration, in addition to the direct purchase of voting equipment from three optical scan voting system manufacturers, paying for the the statewide Election Day support on all three of the manufacturers and the receipt of logs following each election for review/follow-up.

Presenter: Candice Hoke, Ph.D., Director, Center for Election Integrity, Associate Professor of Law

Dr. Hoke was pleased to present testimony to the Commission regarding the following two areas:

1. Details concerning the Center for Election Integrity's appointment as Public Monitor which was established to evaluate voting system performance in Cuyahoga County, Ohio, following the critical failures that occurred in virtually every election function and managerial task during the May 2006 primary.
2. Suggestions with regard to a voting system tracking inventory that the EAC may want to consider creating to help serve the public and remedy the flaws that currently exist in voting systems.

Questions and Answers:

In response to questions/comments by the Commissioners:

Mr. Thomas pointed out that EAC's use of model contract clauses/language on a national level that assures the performance of voting equipment would be very helpful. Mr. Kellner endorsed this concept, noting that it would save both state and local governments from this expenditure. Mr. Thomas further pointed out what NASED's response would be to a request from EAC for regular, real-time reporting of anomalies, in addition to who would make the determination on defects/malfunctions that do not need reporting.

Dr. Hoke provided suggestions regarding what can be done to create an environment that will motivate states and locals to report anomalies with their voting systems.

Executive Director Wilkey followed up on Ms. Goodman's suggestion concerning the possibility of EAC conducting a pilot program, for which a working group could be utilized, for the purpose of forming questions for a 2010 survey with respect to voting system performance. Mr. Wilkey noted that he would explore this concept further with staff and make a recommendation to the Commission at a future meeting.

Commissioners' Closing Remarks

Chair Rodriguez extended her appreciation to EAC staff for their support in helping to coordinate the series of workshops that were convened during 2008 in anticipation of Election Day and to encourage that future Chairs give consideration to instituting similar workshops.

Report of the Executive Director (Cont'd)

Mr. Wilkey provided the following update concerning the disbursement of the 2008 requirements payments:

Funds have been dispersed to North Dakota, Colorado, Montana and South Dakota; on Friday, December 12, 2008, Oregon will receive its funds; Kentucky and Oklahoma have submitted their certifications and additional information is needed concerning their banking information; Georgia and Minnesota need to provide some further information on their 5 percent match; Indiana and Wisconsin's certifications were not accepted because their state plans need to be adjusted; and, Pennsylvania and Louisiana, who submitted their certifications prematurely, can resubmit their certification following a 30-day publication period.

Per Commissioner Hillman's request, Mr. Wilkey noted that he would update the Commissioners at each meeting with regard to the status of the payments until they have been completed dispersed .

Commissioners' Closing Remarks (Cont'd)

Chair Rodriguez was pleased to acknowledge Bradley Weirich, on behalf of Diaz Data Services, who served as a poll worker in Pennsylvania.

Vice-Chair Davidson extended her appreciation to the Commissioners for all of the work that has been put into the issue of Maintenance of Effort (MOE), pointing out that she recently released a statement on MOE which has been posted to EAC's website.

The public meeting of the EAC was adjourned at 3:37 p.m. followed by a closed session to discuss recruitment of EAC's General Counsel.