

Statement of U.S. Representative Rush Holt
To the Election Assistance Commission
Public Meeting: Update on the 2008 Election Day Survey
December 8, 2008

Chair Rodriguez, Vice Chair Davidson, and Commissioners Hillman and Beach, I thank you for calling this important Public Meeting and I regret that I am not able to attend in person. However, I think the matter under discussion, namely the 2008 Election Day Survey and what became of public comments thereto solicited by the Election Assistance Commission (EAC) earlier this year, is important. As one of those who submitted such comments, and found that neither my comments nor other similar comments were included in the final survey, I commend you for discussing publicly what transpired in connection with the public comment process and why the EAC's vetting, processing, and disposition of such comments was not conducted on the record prior to finalization and distribution of the survey to the states.

As you know, in May 2008, in response to solicitation of public comments on the survey by the EAC, many submitted comments. I have attached the letter I sent as an exhibit to my statement. My letter focused entirely on the one area of reporting that appears to be so glaringly lacking in the EAC Election Day surveys: that is, reporting on voting machine failures.

I want to commend the EAC for the journey it began four years ago when the first Election Day Survey was submitted to states for response. It was thorough and probing on a broad range of topics, including the first topic listed among the EAC's duties as set forth in HAVA – that is, to maintain “a clearinghouse of information on the experiences of State and local governments in . . . “operating voting systems in general.”

As you know, your 2004 Election Day Survey provided extensive tabular data on more than a dozen aspects of election administration in the context of actual elections, but did not include tabular data on voting machine failures on a state-by-state and county-by-county basis, even though the EAC had requested and received such data. The 2004 survey notes that 21 states “did not respond to the question or said that information on malfunctions was not available,” while 20 states provided detailed, county-by-county responses, 10 states provided more general statewide responses, and two states reported no failures. Therefore, the overall response rate on the question was 32 out of 55 states and territories, and yet none of these data were reported in tabular format. In contrast, the 2004 survey did include tabular data on a state-by-state, county-by-county basis on polling place and voting machine accessibility, despite the fact that a smaller number of states and territories (“[o]nly 26 out of 55”) responded to disability access questions; in fact the survey stated that “[t]he most significant issue in [the disability access] chapter is the overall lack of data.”

It is troubling that even though in 2004 more states and territories responded to questions pertaining to voting machine failures than to questions pertaining to polling place accessibility, in 2006 the Election Day Survey omitted all questions on voting machine

failures (although fortunately it maintained questions on polling place and voting machine accessibility). Indeed, a closing recommendation included in the 2004 survey with respect to voting equipment reporting was that the EAC should “institute a more extensive program designed to investigate reported voting equipment problems. . . . With the wide ranging rumors and reports of voting equipment problems that came out of the 2004 elections, there is a lack of full information to substantiate or dispel the rumors.” Notwithstanding that recommendation, no data whatsoever on machine failures were requested for or included in the 2006 survey, while fortunately with respect to polling place and voting machine accessibility questions, the EAC reported “a major improvement in the amount of data collected” as compared to the 2004 survey. Both voting machine performance and accessibility of voting are critically important to the integrity of our elections, and questions on both should have been resubmitted to the states for responses in 2006, and in 2008.

Despite my own request and similar requests from voting integrity groups during the 2008 public comment period that machine failure data again be requested as it had been in 2004, and be reported upon in tabular detail, the final 2008 Election Day Survey appears to include only one optional catch-all question that simply allows states to mention machine (and other) problems. This means that there will likely be virtually no reporting whatsoever on machine failures. The Government Accountability Office has pointed out twice this shortcoming, in 2005 and 2008. The EAC Advisory Board also saw the need to remind the EAC of this responsibility (and suggested the reports be available on a website).

In response to the stark gap in EAC reporting on voting machine malfunctions in the post-HAVA world, data gathering and reporting on this subject has been undertaken by independent voting integrity watch-dog groups. In their attempts at careful documentation, these groups have reported thousands of voting machine incidents nationwide. While the efforts of these modestly-funded grassroots groups have been truly impressive, and while I heartily commend them for their service to the integrity of our elections, I must reiterate that it should be the EAC gathering and reporting this data in accordance with its explicit statutory obligation to do so, and because the responses to a formal EAC request may produce the best data.

The Help America Vote act (HAVA) authorized almost \$4 billion for the improvement of the administration of elections, and much of the funding appropriated under the bill to date has been allocated to the purchase and deployment of voting equipment. Therefore, it is critical that the voting public, whose taxpayer dollars paid for this new equipment, receive periodic and comprehensive reports about how well or poorly it is functioning. Indeed, the EAC has been explicitly charged with performing this duty.

The very first item listed in Section 202 of HAVA, which sets forth the duties of the EAC, is that the EAC “shall serve as a national clearinghouse and resource for the compilation of information . . . including the maintenance of a clearinghouse of information on the experiences of State and local governments in . . . operating voting systems in general.” In addition, Section 241 of HAVA sets forth other activities to be carried out by the EAC “to promote effective administration of Federal elections,” which

include the conduct and publication of periodic studies on the “methods of voting and administering elections which . . . will be the most convenient, accessible and easy to use for voters” as well as “yield the most accurate, secure and expeditious system for voting and tabulating election results.” As described in the EAC’s 2005 Annual Report, “[t]he purpose of the [2004 Election Day Survey] was to fulfill EAC’s clearinghouse role under HAVA by compiling a set of national statistics on election practices and voting that would inform Congress and the Nation about the status of election administration.”

It is critical that the EAC request information pertaining to voting machine performance, and report in detail with respect to any and all data it receives, even if states are reluctant to supply it. If states have been hesitant to respond to questions concerning voting machine failures, it also should not have come as a surprise. Hundreds of millions of taxpayer dollars had been spent and were still being spent and taxpayers are wary. But responding to that reluctance by ending the inquiry altogether was precisely the opposite of what should have happened.

I want to commend the EAC for submitting the 2008 Election Day Survey for public comment earlier this year. However, I must ask why important comments have been ignored evidently. In addition, no public meeting was held until now to discuss what comments had been submitted, which ones were taken, which ones were not, and why.

Finally, I want to commend the EAC for its hearing today, which I am hopeful will illuminate what transpired in the course of the public comment period and the preparation of the survey. The EAC has a responsibility with respect to the hundreds of millions of taxpayer dollars that have been spent on voting equipment under HAVA, and the EAC should aggressively oversee voting machine performance. I note that the EAC cannot force the states to answer every question in the survey, and I want you to know that I will work with my colleagues in the 111th Congress to enhance the EAC’s data gathering tools and to support funding to the states for data gathering activities. Regardless of that, the EAC has a responsibility and should not wait. Thank you very much again for conducting this Public Meeting, and for accepting my statement for the record.