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12/07/2008 11:40 PM

To

HAVAinfo@eac.gov

cc

Subject

Dec. 8 Public Meeting Testamony for EAC Draft Strategic Plan

To: Election Assistance Commission

From: Barbara Murphy, 2 Granada Drive, Clifton Park, NY 12065

Date: December 7, 2008

I am writing in response to the Election Assistance Commission's call for an assessment of its Draft Strategic Plan, Fiscal Years: 2009 Through 2014.

I live in Saratoga County, NY and have been an activist for the past six years, working with voting rights groups at the federal, state and county levels to achieve voting integrity. I am very pleased to note that the EAC is aware of the need for assessing its roll in facilitating the voting process. I have several concerns outlined below. I expect to share these concerns with the new administration and with Congressional representatives. As your draft points out, the Help America Vote Act of 2002 (HAVA) initiated the formation of the Election Assistance Commission (EAC) and provided some mandates, in Title III of the law, for federal elections including standards for voting systems. Those standards include accessibility for voters with disabilities and accuracy in the vote count. Updated standards were added in 2005.

Testing of voting systems which was done across the country by federally approved testing agencies has proven to be shoddy. Some states are in the process of shedding their newly purchased, expensive, ill-performing voting systems. It has been shown that none of the electronic voting systems presently in use in this country meet the 2005 federally mandated requirements. It has further been revealed that the testing authorities previously authorized by the EAC have not provided rigorous and transparent testing of the systems already 'approved' by them and accepted by the EAC.

Your draft proposes to provide a further update to the voting system standards in 2009 and 2012. It would be far more important that the EAC insist that and all testing agencies improve their methodology and all vendors of electronic voting systems currently used in any state be held accountable for the failures of their systems to comply with existing 2005 standards and be subjected to renewed, rigorous testing or be reported to the Department of Justice for non-compliance.

In my State, activists have sent strong messages to the New York State Board of Elections during its deliberations of draft regulations for a voting system for our State. Over 1000 citizens, for example, expressed opposition to direct recording electronic (DRE) voting systems. The subsequent regulations developed by the New York State

Board are strong and could be used as a model for the country. They should not be 'watered down' to accommodate a speedy selection of a voting system. No DRE should be in use anywhere in the country regardless of whether or not it contains a 'paper trail'. The computerized portions of optical scan voting systems which count hand marked paper ballots are also electronic devices subject to error and hacking. Optical scanners, when in use in any of the States, should be owned and operated by the State rather than the private companies which have been plagued with problems across the country (Diebold -now called Premier, Sequoia, ES&S, Hart). It is urgent that the voting process be taken out of the hands of private corporations and brought back into a government-run process throughout. Private companies should not be able to claim proprietary rights to secret computer code involved in counting the votes of United States' citizens. The State of Oklahoma has been using a state-run system worth emulating. State ownership would, by law, open the voting system to transparency and public scrutiny.

There is an alternative to a computerized voting system which should not be easily discarded while computers remain insecure. While no system of voting is without some inherent problems, the most transparent system is a simple hand marked, hand counted paper ballot (hcpb) with a ballot marking device for handicapped voters, if they choose to use one. Such a hcpb system could be facilitated with split sessions for election inspectors and a legal holiday on election day to enable recruitment of more inspectors for vote counting at the polls. A Jury Duty type of selection of election inspectors could facilitate recruiting of sufficient numbers of poll workers.

In New York we are better served to be late in choosing a final system and engage in rigorous testing; we can continue use of the levers until a better system is determined, especially since the testing company employed by New York State recently has lost its federal accreditation. New York was wise not to rush to purchase a new system with HAVA funds. .

A further issue for voting system integrity which the EAC should encourage is the security of the 'chain of custody', whether of paper ballots, optical scan machines or of lever machines. Securing the voting system at all stages requires a system of improved training, transporting and storage procedures.

With regard to the requirement for a computerized voter data base, this system may ultimately cause more problems than it solves. For example, the task of merging two or more files to find 'legitimate' voters often causes those who are eligible to vote to be dropped off the data base erroneously. It would be prudent to study instead the desirability of a simplified system of universal voting for all over the age of 18.

Finally, while the EAC has at its disposal an Advisory Board, the Board has not been adequately utilized. Advice cannot be obtained when meetings are not called. The EAC should frequently call upon the technical expertise of voting citizens in the field of computer technology as well as those in need of accessibility enhancements.

"Mary Eberle" <m.eberle@wordrite.com>  
12/08/2008 09:43 AM  
To  
HAVAinfo@eac.gov  
cc  
"Mary Eberle" <m.eberle@wordrite.com>  
Subject  
December 8 public meeting testimony

Dear Chair Rodriguez and Other EAC Members,

From examination of the agenda, I am not sure that these comments will be considered on December 8, but I offer them as general sentiment and hope that you will agree with them and promote the ideas here.

It is shocking to those of us across the country who are working to improve election practices that some counties still use DREs without paper trails. I understand that Georgia's voting machines are all of this type. Please promote emergency legislation in Congress to make it illegal to use such machines in a federal election.

My preference is for the EAC to promote use of paper-ballot-marking devices and hand counting of ballots designed to make that process easy. In fact, a high-grade punch card approach in which the voter can examine the punches before casting the card ballots seems to be the best solution overall. Just to be absolutely clear, what I and other voting activists I know are supporting is an actual card punch (the Datavote model) that reliably and indeliably marks a high-grade card-stock ballot by cutting a precise hole in the ballot, not the misnamed "punch card" system (Votamatic) used in Florida in 2000 that used a stylus to unreliably tear a prescored chad aside.

A quality card-punch system like the Datavote would eliminate "voter intent" problems. Such problems are plaguing the Minnesota recount. They also affected Colorado's Boulder County hand resolution that was required last month for all 160,000 ballots counted on a Hart optical scan system. Punch-card readers are inexpensive and highly accurate; passing a wire through a stack of punch cards sorted to reflect a given race's results assures that all the cards were in fact cast for the particular candidate. None of these qualities are available when regular hand-marked paper ballots are used and counted by optical scanners,

though this approach is miles ahead of DRE use with or without a paper trail. A punching device could be enhanced to comply with HAVA requirements for those voters needing such assistance. Other voters could use a simple, inexpensive punching device, and they will appreciate the speed and accuracy of the method.

Here is a quote by John Gideon from his newsletter "Daily Voting News" posted on December 4, 2008: "The Help America Vote Act of 2002 (HAVA) was signed into law in Oct. 2002. Amongst other things HAVA required the formation of the Election Assistance Commission (EAC) and provided some mandates, in Title III of the law, for federal elections including some standards for voting systems. Those standards include, but are not limited to, accessibility for voters with disabilities and accuracy in the vote count. Testing by experts in accessibility has shown that none of the Direct Recording Electronic voting systems presently in use meet the requirements for accessibility. Failures in testing and vote counting in real elections have also proven that, at times, the voting systems presently being used across the country do not meet the federally mandated requirements for accuracy. &&& So what guidance has been provided by the EAC to the states with regards to Title III? Well, actually none. In fact even though voting systems presently in use do not meet federal law the EAC is just now getting around to issuing guidance to state and local election officials and, according to the draft of the plan 'featured' below, it is going to take another two years before the EAC can complete the guidance. &&& Why can't they just tell the vendors and the states that the law is clear and if they fail to follow that law violations will be referred to the DoJ? The fact that the vendors misrepresent their products as being accessible is a clear violation of the law. It is time they are held responsible and it doesn't take two years of studying Title III of HAVA to make that clear." I completely agree, and I ask that you take on this task as a high priority.

All elections should be audited in a scientifically and statistically supportable way. Boulder County, Colorado, just completed such an audit. The details of this audit are available, but the EAC should promote the Best Practices formulated by a group of citizen experts and posted at [electionaudits.org](http://electionaudits.org).

Furthermore, I think that the tendency to promote all-mail or mostly mail elections does not serve democracy. Much evidence exists that mail ballots can be subject to tampering or accidental mishandling. I'm sure you have seen this evidence posted on the several blogs of voting activists. Instead, ten days prior to Election Day, including the weekend days, could be used for early voting. Mail ballots should be confined to those for whom voting in person during this period is

impossible.

Finally, the movement toward universal registration with fingerprint identification should be discussed and brought more into the public eye. And Internet-based voting activities need to be severely limited; the hazards of hacking an election via the Internet are too great. Every day more information becomes available about the Internet's vulnerability.

Thank you for your efforts to improve the election process.

Mary C. Eberle  
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Boulder, CO 80304  
(303) 442-2164

"Valerie Lane" <saveelections@gmail.com>

12/08/2008 10:51 AM

To  
HAVAinfo@eac.gov  
cc

Subject  
December 8th public meeting testimony

Email to: HAVAinfo@eac.gov

Email subject: December 8th Public Meeting Testimony

Date: December 8, 2008

From: SAVElections Monterey County

To: Election Assistance Commission

Subject: Comments regarding the Approval of all Electronic Software Dependent Voting Systems which violate citizens' Constitutional Rights to democratic election procedures and fail to meet qualifications for voting systems which are described in the Voting Rights Act. All software-dependent voting systems which have been approved by the Election Assistance Commission and receive federal funding fail to provide for valid access for Federal Observers to validate whether or not citizen's votes are being cast and counted as intended by the voters.

Dear Members of the Commission:

SAVElections Monterey County is an action committee sponsored by the Monterey County chapter of the Women's International League for Peace and Freedom. This organization has a long history of supporting equal rights for all citizens and takes special interest in supporting election integrity initiatives. We represent more than 1,000 supporters in Monterey County alone who have concerns about the lack of security, transparency, and violation of citizens' rights to fair elections.

During the past four years our committee members have conducted a thorough and comprehensive analysis of concerns and problems related to the use of software-dependent voting systems throughout the nation with special attention to the systems as used in California under legal conditions imposed by the CA Election Code and by mandates for use as outlined and required by Debra Bowen, the CA Secretary of State.

Since October 2006 we have monitored each election. We are presently represented on the state-mandated "Observer Panel" which is one of the many requirements for Conditional Re-approval of the Voting Systems after they were all DECERTIFIED by Secretary Bowen following the Top-To-Bottom Review which report you have provided on your website.

It is absolutely clear to us after extensive discussion with our County election officials and our Secretary of State's representatives that it is not possible or practical for citizens to have MEANINGFUL OBSERVATION of our election procedures that are, in fact, being conducted "behind closed doors." It is impractical and not possible for the "Observer Panel" to exercise their rights to meaningful observation.

I will remind you that the Government Accountability Office Report on Voting Systems made this analysis of the voting systems which they offered in the 2005 report. Since then it has become clear that efforts to overcome these deficiencies have failed to provide for concerned citizens to attain timely access to relevant election data. Public records requests for electronic data have resulted in expensive lawsuits which have been paid for with voters' tax dollars. Access to electronic records has been delayed to the point where information contained within the records comes too late to challenge election contests within the legal window to do so.

We are available to discuss our concerns and findings with anyone on your commission who has an interest. We have documented our investigation with extensive e-mails and reports to the Monterey County election officials and to the CA Secretary of State.

In August 2007 Secretary Bowen's Top-To-Bottom Review (TTBR) provided clear, comprehensive and valid reasons to decertify all software-dependent voting systems. After careful analysis of the TTBR and the subsequent Conditional Re-approval conditions, it is crystal clear that the conditions for use as mandated by the Secretary of State are inadequate to assure election integrity.

Our conclusion is that to replace this software-dependent voting system with paper ballots cast at precincts on Election Day and hand counted at each precinct election night by the citizens is the only fair and equitable solution presently available to restore the rights to observation of the voting process which are now being violated.

Since October 2007, as a consideration to Debra Bowen and to our community, we have been conducting a comprehensive assessment of whether or not the new TTBR Conditional Re-approval Use Procedures are effectively designed and can be effectively implemented to overcome the pervasive and systemic security vulnerabilities found

throughout the Sequoia Voting System as reported by the TTBR team of computer scientists.

In addition, since October 2007 we have have been engaged in an ongoing discussion with the Monterey County Elections Department and with Debra Bowen related to accessing critical and relevant data from the November 2007 and February, June and November 2008 elections.

With considerable and sustained effort we have not yet resolved this and other pertinent issues with the Monterey County Elections Department and with the SOS office. We have met with Secretary Bowen's representative to discuss if, in fact, the Re-approval Conditions can practically provide the measures that were designed by Secretary Bowen to provide security for the voting systems. We have concluded that the cautions expressed by her TTBR team in regard to providing the necessary security should be heeded and her Re-approval Conditions revisited as she described when she initially presented her Re-approval Conditions.

We advise the Election Assistance Commission and all interested parties to revisit the conclusions drawn by the electronics experts who conducted the TTBR. Secretary Bowen's TTBR advisors cautioned her that they had not conducted an assessment of how effectively the Re-approval Conditions could or would be implemented and they cautioned Secretary Bowen that it was impractical to assume that the Re-approval Use Conditions in themselves would ensure the security of the Voting Systems.

Therefore, please consider the following. The opinion of how the Use-Procedures are to be implemented has been documented to vary across the State of California. We are not aware that there is any penalty for failure to meet the "Re-approval Use Procedures." Secretary Bowen has far fewer staffers than the 58 counties require for optimum attention. Audits which are intended to validate the election tallies are in all counties administered by the individuals lwho have tallied the results in the first place. The audits are, in fact, inadequate and are not administered by independent auditors but are conducted by the election officials themselves. Citizen Observers who may wish to question procedures during the audit are legally constrained from receiving necessary answers if the election officials deem them questions to be an "impediment" to the conducting of the election.

As a group, SAVElections Monterey County has been engaged with observing election procedures since October 2006. We have spent many hours studying CA Election Code and all related necessary procedures to conduct elections. We have attended poll-worker training classes and some of our supporters have served as poll workers. We have also assisted to register new voters. We have offered open forums to the community that have provided education and information regarding election issues. We are a non-partisan group and have invited the public at large to attend our discussions and election-related forums.

We have repeatedly advised the interested parties that our goal is to assess Voting System Security and other issues regarding policy and procedures that apply to ALL of our State and National elections. We have made recommendations to the Monterey County Elections Department (MCED) based on valid evidence to support our suggested solutions to the problems as we perceive them.

Unfortunately, which we have been engaged with the MCED our motives have been repeatedly questioned. This climate has created a chilling effect on those who wish to participate as Citizen Observers.

As community representatives of a broad and diverse group of individuals who are dependent on us to present their valid concerns and to support all citizens' voting rights, we will continue to work on their behalf to resolve these many issues of election integrity.

We invite you to discuss these issues with us so that you may have a better understanding of how the critical issues we have presented undermines our national election integrity.

Thank you for your consideration of this letter. I would appreciate written confirmation that you have received it.

Respectfully,

Valerie Lane, Chair  
SAVElections Monterey County

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[saveelections@gmail.com](mailto:saveelections@gmail.com)

"Georgia Puttock" <georgiaputtock@mac.com>

12/08/2008 10:51 AM

To

HAVAinfo@eac.gov

cc

"Valerie Lane" <saveelections@gmail.com>

Subject

December 8th Public Meeting Testimony

THIS IS A COPY OF LETTER BEING SENT DIRECTLY FROM VALERIE LANE.

Email to: HAVAinfo@eac.gov

Email subject: December 8th Public Meeting Testimony

Date: December 8, 2008

From: SAVElections Monterey County

To: Election Assistance Commission

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Valerie Lane, Chair  
SAVElections Monterey County

34 Mar Vista Drive  
Monterey CA 93940  
831-641-0170  
savelections@gmail.com