

United States Election Assistance Commission

Meeting Minutes – November 23, 2004

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Tuesday, November 23, 2004 at 10:00 a.m. at the EAC offices located at 1225 New York Avenue, N.W., Washington, DC 20005.

- Call to Order:** Chairman Soaries called the meeting to order at 10:02 a.m.
- Pledge of Allegiance:** Chairman Soaries led all present in the Pledge of Allegiance.
- Roll Call:** Chairman Soaries recognized Brian Hancock of the EAC staff who took roll call for the Election Assistance Commission and found present Vice-Chair Gracia Hillman, Commissioner Paul DeGregorio, and Commissioner Ray Martinez.
- Adoption of Agenda:** Chairman Soaries recognized Commissioner DeGregorio, who moved to adopt the agenda for the meeting of November 23, 2004. The motion was seconded by Commissioner Martinez and the motion carried unanimously.
- Adoption of Minutes:** Chairman Soaries recognized Commissioner Martinez who moved that EAC adopt the Minutes of the Commission Meeting held October 26, 2004. The motion was seconded by Commissioner DeGregorio, and the motion carried unanimously.
- Updates and Reports:** Chairman Soaries first recognized Peggy Sims of the EAC staff who reported that to date, EAC has asked the General Services Administration (GSA) to disburse requirements payments to forty-six of the fifty-five States and Territories eligible to receive them. All forty-six States (including the District of Columbia and the Territory of American Samoa) have received requirements payments for fiscal year 2003. These payments total over \$713 million. Thirty-two of these States also have received payments for fiscal year 2004, totaling over \$719 million.
- Given the most recent payments, more than \$1.4 billion has been disbursed of the more than \$2.3 billion appropriated for requirements payments in fiscal years 2003 and 2004. Almost \$887 million remains available to be paid to States (more than \$116 million in fiscal year 2003 funds and in excess of \$770 million in fiscal year 2004 funds). These funds will be disbursed promptly, once the affected States certify in accordance with HAVA section 253 that they are eligible for them.

Chairman Soaries next recognized EAC General Counsel Juliet Thompson who provided a court case update. Ms. Thompson updated and summarized the following court cases:

- Colorado Common Cause, et al. v. Donetta Davidson, Case No. 04CV7709 (District Court for the City and County of Denver (October 2004))
- The Florida Democratic Party v. Glenda E. Hood, Case No. 4:04cv405-SPM/AK United States District Court for the Northern District of Florida (October 14, 2004)
- The Florida Democratic Party v. Glenda E. Hood, Case No. 4:04cv395-RH/WCS United States District Court for the Northern District of Florida (October 21, 2004)
- Emma Yaiza Diaz; Ebony Roberts; Andre Neal Bemby; American Federation of Labor and Congress of Industrial Organizations; American Federation of State, County and Local Employees, AFL-CIO; Florida Public Employees Council 79; AFSCME, AFL-CIO; and Service Employees International Union, AFL-CIO v. Glenda Hood, Secretary of State; Brenda Snipes, Broward County Supervisor of Elections; John Stafford, Duval County Supervisor of Elections; Constance Kaplan, Miami-Dade Supervisor of Elections; Bill Cowles, Orange County Supervisor of Elections; and Theresa Lepore, Palm Beach County Supervisor of Elections, Case No. 04-22572-CV-KING United States District Court for the Southern District of Florida (October 26, 2004)
- Congressman Robert Wexler, et al. v. Theresa Lepore, Supervisor of Elections for Palm Beach County, Florida, et al., Case NO. 04-80216-CIV-COHN (October 25, 2004)
- AFL-CIO et al. v. Glenda E. Hood, et al., Case No. SC04-1921 (October 18, 2004)
- Fay Friedman, et al. v. Brenda Snipes, et al., Case No. 04-22787 (U.S. District Court for the Southern District of Florida) (November 17, 2004)
- Griffin, et al. v. Roupas, et al., Case No .02- C 5270 (U.S. Court of Appeals for the Seventh Circuit) (October 15, 2004)
- Bay County Democratic Party and Michigan Democratic Party v. Terri Lynn Land and Christopher M. Thomas, Case No. 04-10257-BC and Michigan State Conference of NAACP Branches, Association of Community Organizations for Reform Now and Project Vote v. Terri Lynn Land and Christopher M. Thomas, Case No. 04-10267-BC United States District Court for the Eastern District of Michigan (October 19, 2004)
- American Civil Liberties Union of Minnesota, et al. v. Mary Kiffmeyer, Secretary of State, Case No. 04-CV-4653 (U.S. District Court for the District of Minnesota) (October 29, 2004)
- Claude Hawkins, et al. v. Matt Blunt, Secretary of State, Case No. 04-4177-CV-C-RED United States District Court for the Western District of Missouri (October 12, 2004)
- Democratic National Committee, et al. v. Republican National Committee, et al., 125 S.Ct. 306 (November 2, 2004)
- New Jersey Association of Election Officials v. Harvey, et al., Case No. MER-L-2765-04 (Superior Court of New Jersey, Mercer County)

- *The Sandusky County Democratic Party, et al. v. J. Kenneth Blackwell*, Case No. 3:04-CV7582 United States District Court for the Northern District of Ohio (October 14, 2004)
- *Lucas County Democratic Party and Ohio Democratic Party v. J. Kenneth Blackwell*, Case No. 3:04CV7646 United States District Court for the Northern District of Ohio (October 21, 2004)
- *The League of Women Voters v. J. Kenneth Blackwell*, Case No. 3:04CV7622 United States District Court for the Northern District of Ohio (October 20, 2004)
- *White v. Blackwell*, Case No. 3:04-CV-7689 (U.S. District Court for the Western District of Ohio, November 2, 2004)
- *Thompson, et al. v. Blackwell, et al.*, Case No. CV 04-546530 (Court of Common Pleas, Cuyahoga County, October 30, 2004)
- *The State ex rel Wolf v. Blackwell*, Case No. 2004-5772 (Supreme Court of Ohio, November 1, 2004)
- *Summitt County Democratic Central and Executive Committee, et al. v. Blackwell; Heider, et al. v. Blackwell*, Case No. 04-4311, 04-4312 (U.S. Sixth Circuit Court of Appeals, October 2004)
- *Schering v. Blackwell*, Case No. 1:04-cv-755 (United States District Court for the Southern District of Ohio)
- *United States of America v. The Commonwealth of Pennsylvania, et al.*, Case No. 1CV04-830 (U.S. District Court for the Middle District of Pennsylvania) October 20, 2004

Chairman Soaries next recognized Karen Lynn-Dyson of the EAC staff to report on results from the HAVA College Poll Worker Program. Ms. Lynn-Dyson stated that from reports received to date, the program appeared to be quite successful, with over 4,000 students recruited, 1,500 trained as poll workers, and 1,300 actually working at the polls on Election Day. Ms. Lynn-Dyson also reported positive feedback from both election officials and students, which suggested that the grantees did a commendable job in implementing the program. In addition, Ms. Lynn-Dyson noted that it appeared that of all recruiting methods used, word-of-mouth was by far the most successful at getting students to participate in the program. Ms. Lynn-Dyson concluded by noting that many grantees plan to continue the program for the next federal election.

Chairman Soaries recognized EAC General Counsel Juliet Thompson for an update on the EAC Election Day Data Collection survey. Ms. Thompson reported that copies of the survey instrument had been sent to the States and that the survey data was due back to the EAC by January 1, 2005. Ms. Thompson also noted that EAC staff was currently working on the draft survey to

the states for the required NVRA report to Congress, as well as the HAVA mandated Section 703 survey on military and overseas citizen absentee voting.

Chairman Soaries next recognized EAC Communications Director Kay Stimson to review Election Day activities at the EAC office. Ms. Stimson noted that prior to the election, the entire staff of the EAC had undergone training in election administration procedures, legal issues, and other areas to ensure that everyone would be able to assist with Election Day inquiries. Ms. Stimson reported that EAC staff members were available to answer telephone inquiries from 7:00 a.m. to 8:00 p.m. on Election Day, with the office receiving over 700 phone calls. Ms. Stimson also reported that the breakdown of calls was fairly equal relative to the population of the States, and that the most common calls pertained to basic voter information (such as polling place hours, location, and registration information), absentee ballot information, information on provisional balloting, accessibility issues, and voter ID requirements.

Chairman Soaries next called on each of the Commissioners to give an update on their activities on Election Day 2004.

Vice-Chair Hillman stated that she was in Los Angeles, California prior to and on Election Day. The Vice-Chair noted that during her trip she had an opportunity to visit two of the EAC college poll worker grantees and observed their training program. Based on the long lines of voters that the Vice-Chair observed the Friday, Saturday and Sunday prior to the election, early voting was very popular in Los Angeles County. Vice-Chair Hillman also reported that Los Angeles County used the InkaVote voting system, which requires the voters to mark punch card ballots with ink instead of a punching device. The InkaVote ballots are then read and tallied by optical scanning devices. The Vice-Chair finally noted that she had an opportunity to visit Orange County the day before the election where she observed no unusual problems. The Vice-Chair did note that the polling place signage could use additional attention, but that provisional voting did not seem to pose any real issues because there was not a high request for provisional ballots.

Commissioner DeGregorio reported that he began Election Day in Co-Op City in Bronx, New York at a polling place serving over 14,000 voters and staffed by 72 election workers. Commissioner DeGregorio noted that over 9,000 individuals voted in this polling place on Election Day using lever machines. The Commissioner also noted that poll workers at this location were very well paid,

with salaries between \$200 and \$300 dollars. Commissioner DeGregorio next observed elections at polling places in New Jersey with individuals voting on lever machines older than the ones used in New York City. The Commissioner also observed numerous multilingual poll workers in New Jersey. Commissioner DeGregorio next flew to Chicago where he observed banks of attorneys dealing with provisional ballot issues in Cook County. At 5:00 p.m., Commissioner DeGregorio flew to St. Louis where he observed over 200 individuals in Ward 22 waiting in line to vote and other problems that included a shortage of poll workers and only one poll book. The Commissioner noted that in the November election, St. Louis County reported fewer hanging chads than ever before on their punch card ballots. Finally, Commissioner DeGregorio observed the conclusion of the counting process in the City of St. Louis, which ended at approximately 4:00 a.m.

Commissioner Martinez reported that he observed elections in Cuyahoga County, Ohio on November 2, 2004. Commissioner Martinez noted that he spent the entire day visiting 10 polling locations in the Cleveland area where he observed dedicated poll workers and patient voters. Commissioner Martinez also noted that he observed some inconsistencies with how the required HAVA polling place signage was displayed. In some instances, signs were posted on the wall of the polling place, but in other cases, signs were set out on tables along with other election materials. Commissioner Martinez witnessed a long line of voters at a polling place that did not utilize all of their voting stations. There were 5 function stations functioning, however, 6 or 7 more voting stations that could have been used, had not been set up. Commissioner Martinez contacted the county election director regarding this issue, and the County responded by sending additional poll workers to set up the additional voting machines. Commissioner Martinez concluded by praising the dedication of the poll workers and noting that the “people” side of the election process needs help and improvement in addition to any improvements made to the voting systems.

Leading up to November 2, 2004, Chairman Soaries was in Florida, the center of public and media attention prior to Election Day. Chairman Soaries noted that since the 2000 election, Florida had made significant improvements including the development of a statewide poll worker training curriculum and the replacement of the controversial punch card voting systems. Chairman Soaries also reported meeting with representatives of the NAACP, the day before the election, to discuss issues including the lawsuit filed

over the lack of minority access to early voting sites in Volusia County. As a result of the lawsuit, the county was ordered to open 4 new early voting sites to correct the problem. Chairman Soaries observed several unintended consequences of early voting such as individuals mistakenly showing up at early voting sites which were closed on Election Day and delays in opening some polling locations on Tuesday morning because of very late closures of early voting sites on Monday evening. Chairman Soaries spent Election Day in Miami, Broward and Leon Counties. While in Miami, the Chairman observed over 50,000 unopened absentee ballots, with more scheduled to be delivered later in the day, and only 3 machines dedicated to scanning these ballots. Chairman Soaries also noted voter problems caused by thousands of registration applications being turned in on the deadline, many of which had been held for months by some voter registration groups. In Broward County, Chairman Soaries reported problems with absentee ballots not being delivered in a timely fashion. The Chairman noted that it is imperative to do further study on absentee balloting procedures to improve the process for future Federal elections.

Chairman Soaries concluded by saying that after the November 2, 2004 election, there are still many issues surrounding the election process which need further study. The Chairman noted that there had been no major machine malfunctions, but significant concern remained about voting machinery. Consequently, improved standards related to security and auditability are crucial to increasing public confidence in our system of elections.

Chairman Soaries next recognized EAC Interim Executive Director Carol Paquette who reported on the EAC action agenda for the coming year. Ms. Paquette reported that the EAC's work was only beginning and that Congress and the nation expected to hear what the EAC is planning for the improvement of the election process. Ms. Paquette stated that the EAC budget for fiscal year 2005 would be \$14 million (\$13.8 million after an across-the-board recession OMB). Ms. Paquette reported that during 2005, NIST and the TGDC will continue their work to update the Voting System Guidelines, and will begin to work to accredit independent test laboratories under the program of the National Voluntary Laboratory Accreditation Program (NVLAP). Ms. Paquette further stated that the EAC would work to issue guidance for statewide voter registration databases and provisional balloting in addition to analyzing survey data to determine what other topic might need EAC attention. Ms. Paquette finally noted that part of

the 2005 budget included a \$200,000 appropriation to continue the college poll worker program. Additionally, EAC would need to establish an audit process to monitor how states are using the requirements payments.

Chairman Soaries next asked for a motion to adopt and add to the EAC agenda for 2005 a series of public hearings to discuss issues related to voting systems, provisional balloting, and statewide voter registration databases, and other items of specific interest. Commissioner Martinez initiated the motion, the motion was seconded by Commissioner DeGregorio, and the motion passed unanimously.

Chairman Soaries asked for a motion to adjourn the meeting at 11:54 a.m. Commissioner DeGregorio initiated the motion, the motion was seconded by Commissioner Martinez, and the motion passed unanimously.