

Minutes of the Public Meeting United States Election Assistance Commission

Hyatt Regency on Capitol Hill
Yorktown Room
400 New Jersey Avenue, NW
Washington, DC 20001

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on Thursday, February 7, 2008. The meeting convened at 10:03 a.m., EDT. The meeting was adjourned at 12:55 p.m., EDT.

PUBLIC MEETING

Call to Order:

Chair Rosemary Rodriguez called the meeting to order at 10:03 a.m.

Pledge of Allegiance:

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

Roll Call:

EAC Commissioners:

EAC General Counsel Juliet Hodgkins called roll of the members of the Commission and found present: Chair Rosemary Rodriguez, Vice-Chair Caroline Hunter, Commissioner Donetta Davidson, and Commissioner Gracia Hillman.

Senior Staff:

Executive Director Tom Wilkey and General Counsel Juliet Hodgkins.

Presenters:

Karen Lynn-Dyson, Director, Research Division, U.S. Election Assistance Commission; Ernie Hawkins, Director, Consulting Services, The Election Center; Lee Page, Associate Advocacy Director, Paralyzed Veterans of America; Mitch King, Manager, Government Relations, United States Postal Services; and, Edgardo Cortes, Election Research Specialist, U.S. Election Assistance Commission

Adoption of Minutes:

Chair Rodriguez asked for a motion to adopt the minutes of the December 11, 2007, meeting. Commissioner Donetta Davidson moved to adopt the minutes. The motion was seconded by Vice-Chair Caroline Hunter. Commissioner Gracia Hillman abstained from voting on the motion. The motion carried with a vote of three in favor, one abstention.

Adoption of the Agenda:

Chair Rodriguez asked for a motion to adopt the agenda. Vice-Chair Hunter moved to approve the agenda. Commissioner Donetta Davidson suggested an amendment to the motion to include presenter Lee Page's name who was inadvertently omitted from the roster. The amendment was accepted by Vice-Chair Hunter and the motion was seconded by Commissioner Davidson. The motion to adopt the agenda passed unanimously.

Approval of Minutes:

Chair Rodriguez asked for a motion to adopt the minutes of the January 17, 2008, meeting. Commissioner Gracia Hillman moved to adopt the minutes. The motion was seconded by Commissioner Davidson. The motion to adopt the minutes passed unanimously.

Reports:

Executive Director:

Mr. Thomas Wilkey extended a welcome to the Secretaries of States and former colleagues from the National Association of Secretaries of States who were in attendance at the meeting.

Mr. Wilkey reported the following EAC activities since the January 17, 2008 meeting:

EAC has expanded its Web site to accommodate voters with limited English proficiency to include a Spanish Glossary of Election Terminology, an expanded En Espanol section, poll worker guidebooks that include information on surveying voters with limited English proficiency, effective ballot designs and an elections report which includes information on how to design ballots and polling place samples in several different languages, and translating the National Voter Registration Form into Spanish. Future activities in this area will include translating the glossary of election terminology into five Asian languages, and future election management guidelines about surveying voters with alternative language needs.

The following information is now available on EAC's Web site for review: Expanded information with respect to the \$115 million in requirement payments for the States, recently appropriated by Congress under the link entitled "In the Spotlight," the Voting System Test Laboratory Accreditation Manual which is currently out for public comment, letters issued to Electronic Systems and Software (ES&S) and AutoMARK concerning ES&S's acquisition of AutoMARK, MicroVote's test plan, and EAC's fiscal year 2007 annual report to Congress.

Hardcopies of both the 2007 annual report and the Quick Start Guidelines were available to members of the audience for their consideration.

The next roundtable discussion is scheduled for February 29, 2008, in Washington, D.C.

EAC distributes a monthly newsletter to keep the public updated on activities, upcoming meetings, and other Help America Vote Act (HAVA) - related updates.

Peggy Sims has retired from federal service. She was a valuable asset to EAC and will be greatly missed.

Questions and Answers:

In response to questions by EAC Commissioners:

Mr. Wilkey reported that EAC did not receive the number of phone calls that it was anticipating on Super Tuesday. However, the number of visits that the public made to EAC's web site was remarkable. The exact number of hits will be made available at the next EAC meeting.

To date there have been no certifications under EAC's certification program, it is anticipated there will be some in the very near future.

Presentations:

Free Absentee Postage Study:

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

Ms. Lynn-Dyson presented the Commission with the results of an 18-month study that was conducted on the topic of free or reduced postage for the return of voter absentee ballots that was conducted by The Election Center along with Braun Research and IFES. The results of the final report, the findings from the National Voter Survey, along with the focus

groups that were conducted were reviewed by staff and were found to be both methodologically sound and accurate.

The random sample of 1,200 voters and a series of focus groups conducted in seven different locations provided a very good read of the attitudes and opinions of select groups of voters on the topic of free postage for absentee ballots.

The Election Center has provided the EAC with a beginning set of questions for its consideration as it performs a more in-depth inquiry into the financial costs that would be incurred by the U.S. Postal Service and local election jurisdictions in the event a free absentee ballot postage program would be implemented.

The results of the National Survey have provided interesting insights into voters' overall understanding of the voting process and their voting behavior during the past two general elections, and should also be of interest to EAC as it considers future initiatives that would educate voters with respect to the absentee voting process.

It is anticipated that EAC will perform an in-depth assessment of the risks, costs and benefits, in addition to a detailed policy and gap analysis that examines both the advisability and feasibility of implementing a free absentee postage policy.

Ms. Lynn-Dyson concluded by recommending that the Commission accept the study and its findings, which were submitted to EAC staff on January 26, 2008.

Presenter: Ernie Hawkins, Director, Consulting Services, The Election Center

Mr. Hawkins expressed his appreciation for having the opportunity to participate in the study and to thank both the U.S. Postal Service and EAC staff for their cooperation and assistance during the 18-month study, the purpose which was to examine the feasibility and advisability of establishing a program under which the United States Postal Service would either waive or reduce the amount of postage applicable to the return of absentee ballots in general federal elections.

The report consists of the following three parts: An executive summary which integrates all of the data including the survey, the focus groups, and the expertise of the researchers; a section on the survey and the data analysis; and, a section on the focus group data.

Mr. Hawkins provided an overview of the following four activities associated with the study:

1. Literature Research. The Election Center first completed a literature research that was conducted by Dr. Robert Montjoy, Professor of Political Science at New Orleans University, for which the EAC incurred no expense. The review revealed very little on the subject of Free Absentee Postage. Other literature that was available included the effects of postage on mail surveys, specifically an invitation to scholars where postage was applied to half of the invitations and not to the others, and some literature was found on the cost of voting. Members from the National Association of State Election Directors (NASSED) indicated they had no knowledge of literature specific to the topic. References were provided in an earlier draft to EAC staff, which were beyond the scope of the project.
2. Use of free postage already in use. State and local election officials, through NASSED membership, were contacted to determine whether their jurisdictions are currently providing free or reduced postage for the return of absentee ballots. Data concerning voter participation prior to applying free postage and after was requested. An incomplete draft of this survey was provided in the original draft submitted in the summer of 2007. Because this inquiry was beyond the scope of the project, it was not completed.
3. National voter survey. Prior to commencing the survey, questions were drafted and submitted to the EAC, the U.S. Postal Service, The Election Center's National Postal Task Force, several State and local election officials and advocacy groups for their consideration.

The survey was conducted through telephone interviews under the direction of Braun Research, a privately held marketing and public opinion research firm headquartered in Princeton, New Jersey.

The survey that was conducted from August the 7th through August 30th, 2007, included a sample of 1,205 adults who were at least 18 years of age with an equal number of male and female respondents. The data was collected through a random digit dial method in order to generate random samples of households in the U.S. The selection of one respondent from each household was based on the most recent birthday.

The results of the survey are as follows: While free postage is an attractive option for some, it may have only a limited effect on voting behavior. Americans welcome the opportunity of choosing whether to vote in person or by absentee ballot. The majority of respondents agreed that free postage would increase their likelihood of voting. Individuals with disabilities and those without have a roughly equal

likelihood of voting by mail if free postage is available. Low income and middle to high income Americans demonstrate a roughly equal likelihood of voting if they do not have the option of voting by mail without paying postage. Majorities across all age groups indicate they would vote by mail whether postage was paid for or not if given the option. Respondents who indicated that voting by mail would increase their likelihood to vote stated this was based on convenience, flexibility, avoiding the need to find transportation; that it eliminates fighting large crowds at the polling sites, and saves them time. Voting by mail, even when postage is not free, is cheaper than the cost that is incurred for gas or other transportation in traveling to a polling location. Voting by mail, even when postage is not free, is a good alternative for the sick, disabled, elderly, low income and voters facing adverse weather conditions.

4. Focus Groups. Prior to commencing the focus groups the Moderator's Guide, along with the proposed locations of the focus groups were reviewed by EAC staff and The Election Center's Postal Task Force. Suggestions were incorporated into the Guide and in the case of the Postal Service; additional focus groups were scheduled which involved an additional agreement approved by the EAC.

Focus groups were held throughout the country in seven different locations over a four-week period of time and involved the following three target groups: Low-income, citizens with disabilities, and senior citizens. Participants were recruited by local civic society organizations serving the three aforementioned target groups, and the groups met in rooms that were secure with both a video recorder and audio recorder for follow-up and/or archival purposes. One or two representatives from Braun Research and the Postal Service were present during each of the focus group meetings. Copies of the tapes are available upon request.

The findings of the focus groups were as follows: All three populations are generally supportive of a system of free or reduced postage. Such a program would play a small role in increasing access to voting and voter turnout where it is not currently an option, especially for voters that were the target of the study. One of the interesting statistics from the focus groups revealed that 30 percent of the participants did not know if they were eligible to vote by mail or not. A system of free postage is much more preferable than a system of reduced postage for absentee voting by mail. Participants in the focus groups stressed that the attractiveness of free postage is the convenience factor over the cost factor. The number one concern of the focus groups was fraud.

Recommendations:

1. If a program is sought, it will have to be with free postage. Reduced postage should not be considered an option.
2. If a program is considered, it must include all voters and not limited to the selected target groups that were studied.

Mr. Hawkins concluded his testimony by recommending that, one, the EAC consider completing the literature review that was initiated but not completed by The Election Center due to the fact that there is data that relates to non-election specific programs where postage had been applied to a portion of the desired responses and not to others; and, two, the EAC consider completing the study on the States and local jurisdictions that currently or have in the past provided free postage to see if it affects the rate of return.

Presenter: Lee Page, Associate Advocacy Director, Paralyzed Veterans of America

Mr. Page submitted the following testimony to the free absentee postage study:

If Congress determines free postage, it must be free to all voters and the cost of doing so should be appropriated at the federal level, not passed on to the States and the Postal Service as an unfunded mandate.

The study revealed that individuals with disabilities are a determined segment of the U.S. voting population who want to vote, but they face the following barriers: Unemployment, lack of transportation or access to transportation, no form of I.D., and are low-income or on fixed incomes. Free postage would be one less burden that the disabled and senior citizen population faces both from a cost and convenience factor.

The Senate Special Committee on Aging recently held a hearing on older voters' opportunities and challenges in the upcoming 2008 election, which focused on the disenfranchisement of aging seniors and those with disabilities in long-term care facilities and/or institutional settings. EAC can anticipate the receipt of a letter from the Chair of the Rules Committee regarding this issue.

Mr. Page concluded his testimony by emphasizing that free postage will increase the participation of the voting populous, which should be a priority in ensuring strong Democracy.

Presenter: Mitch King, Manager, Government Relations, United States Postal Services

Mr. King submitted the following testimony to the free absentee postage study:

Mail plays a vital role in the American Democratic process, pointing out that it can enhance the election process, help reduce election costs, and contribute to higher voter turnout.

The Postal Service has developed a national election mail program to assist States that choose to conduct elections by mail in order to ensure that voters experience a well-organized process and provides them with the highest level of trust and confidence when casting their ballots by mail. The primary objectives of this program are to understand the mailing needs of the nation's election officials, provide easy access to postal products, services and information, educating postal employees on the importance and proper handling of election mail pieces, and to work with State and local election officials in developing new ideas or innovation.

While the Postal Service enthusiastically embraces its role in supporting the most important exercise in Democracy experienced by Americans, there are significant concerns with respect to the funding of free postage for mail-in ballots based upon unpaid pledges that the Postal Service has incurred and, therefore, has resulted in approximately \$750 million in debt on the Postal Service's budget that remains to be paid. Any proposed increased costs for handling election mail for free could force the Postal Service to make operational cost cuts elsewhere.

Appropriation for free postage needs to be directed to the potential mailers and not to the Postal Service. In this manner, funds could be appropriated through a central entity directly to States to assist them with the financing of postage-paid return envelopes, which provides an excellent, well-established method to allow voters to return ballots without the need for postage.

Mr. King concluded his testimony by pledging the Postal Service's commitment to continue working with Secretaries of States and local election officials by providing both the tools and information that can be utilized to meet the needs of voters.

Questions and Answers:

In response to questions by the EAC Commissioners:

Mr. Hawkins reported it is his experience that most jurisdictions do not inform voters how much postage to put on the envelope for returning absentee ballots due to the fact that it is unknown at the time the envelope is printed how much each ballot will weigh.

Mr. King explained it is anticipated that the cost of mailing an absentee ballot would range from 80 cents to \$2.00 depending on the weight and size of the envelope. Mr. King reported that unpaid pledges in connection with free postage for the return of ballots during federal elections is one concern, in addition to the fact that there could be off-year special State elections which free postage would apply to. Another concern is that voters may be confused if they only get free postage for federal but not local elections.

Mr. King explained his previous recommendation regarding the appropriation of funds through a central entity down through the States. States would develop a postage paid return envelope for absentee ballots which would mean the Postal Service would be dealing with postage-paid mail. A central entity could be the EAC based on which States had established absentee ballot programs with certain funds being allocated to the States to help them pay for the cost of the postage incurred.

Mr. Hawkins reported that the results of the survey corresponded with what he was hearing while sitting in on the various focus groups. Aside from the fact that a majority of the participants in the focus groups wanted to talk about voting by mail and not free postage, the concerns/conclusions reached, while not unanimous, were very similar.

Mr. Hawkins reported that The Election Center is in the process of conducting a case study for EAC regarding how participation is affected by States that are all mail and provide free postage for absentee ballots.

Mr. Hawkins reported there was a good deal of discussion in several of the focus groups regarding voters who do not trust their ballot to the mail and instead prefer to cast their vote at an actual polling location or drop their ballot off at a central office,

Chair Rodriguez asked for a motion to accept the free absentee postage study. Vice Chair Hunter moved to accept the study. Commissioner Davidson seconded the motion. The motion carried unanimously.

The Commission recessed at 11:36 a.m. and returned to public session at 11:54 a.m.

New Business

Consideration and Vote on Interim Policy for Changes to State-Specific Instructions on National Mail Voter Registration Form

Commissioner Hillman provided a detailed background regarding the steps that have been taken by the Commission and staff towards a process by which EAC would review and approve requests from States to make changes to the State instruction portion of the National Mail Voter Registration Form.

Commissioner Gracia Hillman made a motion to approve the "Proposed Interim Procedure for Updating the Federal Mail Voter Registration Form" that was submitted to the Commission by staff on or about January 15, 2008. Vice-Chair Hunter seconded the motion. The floor was open for discussion/comments on the motion. A position statement released the previous night by Commissioner Davidson and herself concerning this proposal has been posted on EAC's Web site. Chair Rodriguez requested a roll call on the motion.

Commissioner Hillman - aye
Vice-Chair Hunter - nay
Commissioner Davidson - nay
Chair Rodriguez - aye

[The motion failed for lack of a majority.]

Consideration and Vote on Disclaimer Proposal to State Instructions Portion of the National Voter Registration Act (NVRA) Form

Vice-Chair Hunter presented the Commission with a disclaimer to the State instructions portion of the NVRA form which was considered at the January 17, 2008, meeting and was tabled in order to allow General Counsel Hodgkins an opportunity to determine whether adding a disclaimer constitutes a substantive change and therefore requires a public comment period.

The Commission adopted a Web site disclaimer at its January 17, 2008, meeting which states: "As of," the date by which it is updated, "the following States have requested a change in their State instructions." The States will be listed. "The Commission has not yet approved these requests." The disclaimer is posted on EAC's Web page before one clicks on the Voter Registration Form.

Vice-Chair Hunter emphasized that the purpose for the disclaimer to the State instructions is solely for notifying the public who may not have access to the Internet about the status of requests for changes to State instructions on the NVRA form. The disclaimer does answer the States requests.

Vice-Chair Hunter made a motion to adopt the disclaimer for the State instructions portion of the NVRA Form, which reads as follows: "The State of 'blank', has requested a change to its State instructions. The Commission has not yet approved this request. For further information please contact your State election official or refer to the following Web site." Commissioner Davidson seconded the motion. The floor was open for discussion at which time General Counsel Juliet Hodgkins presented her recommendation, through a memorandum, that the Commission should not accept the proposal based upon the fact that it fundamentally erodes the concept which the courts have upheld that States must accept and use the federal form. Counsel Hodgkins encouraged the Commission to continue its efforts in trying to find a way to correct the form but to do so in a manner that will ensure the form is accurate so that voters will have the ability to rely upon it to their benefit. Chair Rodriguez requested a roll call on the motion.

Commissioner Davidson - aye
Vice-Chair Hunter - aye
Commissioner Hillman - nay
Chair Rodriguez - nay

[The motion failed for lack of a majority.]

Update on HAVA Funding Issues

Edgardo Cortes, Election Research Specialist, U.S. Election Assistance Commission, acknowledged the retirement of Peggy Sims from the EAC, noting that her departure will be a great loss. Mr. Cortes was also pleased to announce the addition of Julianna Milhoffer and Julia Ruder to the Programs and Services Division. Ms. Milhoffer was formerly with the Minnesota Secretary of State's Office and Ms. Ruder was formerly with the Wisconsin State Board of Elections.

Mr. Cortes reported that a new section has been added to EAC's web site regarding the \$115 million in requirements payments, which was part of the Omnibus Appropriations Act, passed by Congress in December 2007. The new section includes information regarding the funding that each State will be eligible for, the amount of matching funds that each State will be required to provide, instructions on how to apply for the funding, and frequently asked questions (FAQs) regarding the requirements payments.

The deadline for use of Section 102 funds to those States who originally applied for a waiver has been extended until March 2, 2008. A review of the certifications submitted by States that did not request a waiver of Section 102 funds and had a deadline of the 2004 general election will be conducted to determine whether any of the funds need to be repaid.

Section 101 and 102 annual reports which cover calendar year 2007 are due by the end of February, and Section 251 reports which cover the 2007 federal fiscal year are due by the end of March. A section on reporting, model forms, sample narratives, and other information is available on EAC's Web site to help States fill out their reports. Following the submission of the annual reports, EAC will provide Congress with an update regarding how States have used their HAVA funds to date.

To date 23 audit resolutions have been issued, ten, which were conducted by the Office of Inspector General, and 13, which were conducted by the States under the Single Audit Act. The audit resolutions have resulted in almost \$16 million in requested payments due as a result of either misspent funds or in many cases funds that were not properly placed into the election fund. This accounts for lost interest or under-matching by the States.

Questions and Answers:

In response to questions by EAC Commissioners:

Mr. Cortes reported that instructions are being provided to States to help them when applying for the additional requirements payments under Section 251, which will assist them in amending their State HAVA plan, along with what the process is with regard to the posting for public comment so that they receive their funds in an expeditious manner. It is anticipated that a majority of the States will be required to update their State plans in order to receive the additional requirements payments, due to the fact that most States' plans only covered the first two or three years after they received their funding.

Each State that receives federal election funds must complete a yearly audit. A clearinghouse of the single audits conducted in accordance with the Single Audit Act, which are required to be posted, is available for downloading/review by all federal agencies.

It is most likely that the California special audit of 2005 was not among the ten conducted by the Office of Inspector General but rather by the Department of Interior due to the fact that the Office of Inspector General was not established at that point in time. Mr. Cortes will double-check this point and advise the Commission regarding his finding.

The main purpose of conducting audits with respect to Section 251 funds is for the purpose of helping States meet their Title III requirements. States may use Section 251 funds for improving the administration of federal elections, but only if they have filed one of two certifications with

EAC. Auditors rely on Section 101 as a general guide when determining whether Section 251 funds were used by States to better the administration of federal elections. Any questions that are raised during the audit process are flagged and presented by the auditors to EAC for review.

Commissioners' Closing Remarks

Commissioner Davidson extended her appreciation to all who were able to attend the meeting and expressed her anticipation to future meetings with the National Association of Secretaries of States (NASS) and the National Association of State Election Directors (NASED).

Chair Rodriguez reflected on her attendance at the precinct caucuses that were held in Denver, Colorado, on Super Tuesday, in addition to a panel discussion the following day with the Chairs of the State Democratic and Republican parties.

Upcoming roundtable discussions will be held on the following dates: February 29, 2008, in Washington, D.C. where voting system manufacturers are being invited to look at EAC's voluntary voting system guidelines (VVSG); March 19, 2008, in Denver, Colorado, where the Commission will hear a presentation by the voting system test labs; and, March 27, 2008, at Gallaudet University where the Commission will hear a presentation by the accessibility and usability professionals.

On February 3, 2008, the EAC Web site received 107,000 hits and on February 4, 2008, the Web site received almost 77,000 hits, which is greatly encouraging to the work of both the Commission and staff. Executive Director Wilkey announced that he received a news bulletin from the Washington Post indicating that Mitt Romney has suspended his bid for the Republican nomination

Adjournment

Chair Rodriguez adjourned the meeting at 12:55 p.m.