



**UNITED STATES ELECTION
ASSISTANCE COMMISSION**

**PRESENTATION
OF
COMMISSIONER GRACIA HILLMAN
VICE CHAIR OF THE
U.S. ELECTION ASSISTANCE COMMISSION
TO THE
JOINT MEETING OF THE OREGON
STATE SENATE AND HOUSE
COMMITTEES ON RULES**

WEDNESDAY, FEBRUARY 18, 2009

*U.S. Election Assistance Commission
1225 New York Ave., NW – Suite 1100
Washington, DC 20005*



Good afternoon Chairman Devlin, Vice Chair Ferrioli, Chairman Roblan, Vice Chair Berger, Vice Chair Edwards and Members of the Senate and House Committees on Rules. My name is Gracia Hillman. I am pleased to be here today to discuss the Help America Vote Act, the U.S. Election Assistance Commission (EAC) and the progress that we are making to improve the administration of Federal elections.

The Help America Vote Act of 2002 (HAVA) was passed by Congress in direct response to the difficulties that arose in the counting of ballots in Florida following the Presidential election of November 2000. I am sure you remember the stories and pictures of hanging, pregnant and dimpled chads. All of America became aware of just what a chad is and I am sure that new parents chose to not name their sons Chad during that era of failed voting systems.

HAVA covers all 50 States, District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam and American Samoa. To help re-instill voter confidence in our electoral process, HAVA has provided about \$4 billion in funding to help the States implement the law. Mr. Chairman, it is critically important, even six years later, that State legislatures understand the complexities of the Help America Vote Act of 2002 (HAVA). I thank you for the opportunity to be here today to share information about the election improvement progress that America has made since 2002.

INTRODUCTION

The EAC is a bipartisan commission consisting of four members: Gineen Beach, Donetta Davidson, Rosemary Rodriguez and me. We annually select officers. Commissioner Beach is our 2009 Chair and I serve as Vice Chair. The commission was established as a new federal agency in December 2003. The EAC is an independent commission that guides and assists States in the effective administration of Federal elections. In doing so, the EAC has focused on fulfilling its obligations under HAVA and the National Voter Registration Act of 1993 (NVRA). The EAC administers the distribution of the \$4 billion dollars in HAVA Requirements Payments to States. We also provide State and local jurisdictions with information tools that they can use to help increase the accuracy, reliability, and security of their election systems and processes.

HAVA also established the EAC to serve as a national clearinghouse of election information. To fulfill this mandate, we make research available on a range of issues, including best practices in election administration. This information is presented to the election community and the public through our website (www.eac.gov) and formal reports. Never before have so many, been so thoroughly informed about the federal voting processes of America.



Mr. Chairman, EAC is looking forward to working with Secretary Brown. We have enjoyed our relationships with former Secretary Bradbury and your State Election Director John Lindback. We have equally enjoyed our relationships with all of the State and local election officials. They have served on our advisory committees and working groups as active and informed participants and have commented on our proposed policies and draft reports. I believe that the exchange and interaction has been mutually beneficial to Oregon and EAC.

HAVA PAYMENTS TO STATES

Under HAVA, Oregon has received about \$35 million from EAC, to which the state was required to provide a 5 percent match. These funds, including the 5 percent match, must be maintained in a special election fund and are subject to federal audits. Interest earned on the money stays with the State and must be used for HAVA activities. The law stipulates how these “no year” funds can be spent and must be accounted for. Information about how the State will comply with the law is reported to the federal government and the public in Oregon’s State HAVA Plan and in annual reports to EAC.

Oregon is currently undergoing an audit of its HAVA funds, as required in the law. EAC audits are conducted by our Inspector General. The fieldwork for the Oregon audit has been completed and the Inspector General is working on a draft report that will be sent to the State for review and comment. The Office of Inspector General is part of the EAC, but operates independently of the commission. I do not know the timeline for the completion of this draft report. It is likely that it will be ready within the next few weeks. All comments provided by the State in response to the draft are taken into consideration and will be included in the final report.

HAVA contains a Maintenance of Effort provision. Under this provision, States are required to maintain its expenditures for certain HAVA funded activities at a level not less than those for the fiscal year ending prior to November 2000. Basically, States cannot use HAVA funds to supplant expenditures it had maintained prior to November 2000. States must also make certain that local units of government that have received HAVA funds from the State also comply with the Maintenance of Effort provision. EAC is currently working with States to determine appropriate documentation to support the requirement.



COMPLIANCE WITH THE LAW

Mr. Chairman and members of the committees, you will be pleased to know that Oregon seems to be effectively spending its HAVA funds and successfully meeting the requirements of the Help America Vote Act. In July 2006, then Secretary of State Bradbury certified that Oregon is in compliance with Title III of HAVA. Title III is the section of the law that prescribes Uniform and Nondiscriminatory Election Technology and Administration Requirements.

Oregon is rather unique in America with its all-mail elections, although we see that Washington State and counties in northern California are now following suit. And because of this uniqueness, Oregon's task to be HAVA compliant is different than the other States.

Let me briefly touch on each of the key requirements of Title III, remembering that these requirements apply to Federal elections. Certainly we hope that States will implement improved administrative procedures for all elections, but EAC's jurisdiction covers elections for federal offices.

Voting System Standards

HAVA requires that each voting system used in an election for Federal office shall meet specific requirements. These requirements permit voters to verify and correct the votes they selected in a private and independent manner, before the ballot is cast and counted. The voting system must let the voter know if they have over or under voted the ballot before it is cast and counted. HAVA has provisions for how States that use central count voting systems can meet these requirements through voter education and instructions.

This section of HAVA also requires that the voting system produce a record with a manual audit capacity and establishes an error rate. Additionally, the system must be accessible for voters with disabilities and provide alternative language accessibility pursuant to the Voting Rights Act.

Provisional Voting and Voting Information

Provisional voting is also referred to as "Fail Safe" voting. HAVA requires that every voter be able to cast a ballot. If the voter's name is not on the official registration list, then the voter is entitled to cast a provisional ballot. The election administrator must timely resolve the voter's status to determine if the provisional ballot will be counted.

The voting information requirements of HAVA mandate that State and/or local election jurisdictions must publically post specific information at each polling place on Election Day, including sample ballots and the rights of the voter.



Computerized Statewide Voter Registration List and Voters Who Register By Mail

Each State must have a single, uniform, official, centralized, interactive, and computerized statewide voter registration list. This requirement has proven to be quite challenging for many states that have had to create the database. As EAC has learned, through its efforts to establish itself as a federal commission, setting up new systems is challenging and time consuming. Nonetheless, Oregon and other States have met the challenge to establish the statewide voter registration list. State usage over time will reveal the vulnerabilities, which should be immediately captured and corrected.

Title III of HAVA also specifies identification requirements for voters who choose to register to vote by mail for a federal election.

State Discretion

Toward the end of Title III, there is a section that clarifies that the specific choices on the methods of complying with the title's requirements shall be left to the discretion of the State. Nonetheless, all States must have an Administrative Complaint Procedure for voters who feel their rights were abridged, denied, or otherwise disrupted.

ELECTION ADMINISTRATION SUPPORT

Management Guidelines

In 2005, EAC began work on a comprehensive set of management guidelines. We have collaborated with State and local election officials to develop the framework and content of these guidelines. Several chapters have been produced and more are being developed. To supplement the chapters, EAC also produces *Quick Start Guides*. These guides are handy reference tools that cover a multitude of topics; such as ballot preparation, voting system certification, absentee voting and vote by mail, and contingency and disaster planning. These guidelines and guides are available on our website at www.eac.gov.

Voting System Standards, Testing and Certification

EAC is responsible for setting standards against which voting systems can be tested and certified. This requirement marks the first time that the federal government has undertaken responsibility for the testing and certification of voting systems. EAC works with the National Institute of Standards and Technology on this major undertaking. And while State and manufacturer compliance with this section of HAVA is voluntary, we believe that EAC's comprehensive certification program will provide the assurances that States seek about the systems they seek to purchase.



PROGRESS MADE AND LESSONS LEARNED

Mr. Chairman, significant improvements in voting processes have been made all across America since 2004. Technology is being used in appropriate ways to help make voting systems and processes more accessible, reliable, efficient, and transparent. Election officials are using information and technology to improve their processes and increase their capacities to handle voter interest and inquiries. Voters are using information and technology to increase participation and minimize frustration.

The 2008 election cycle energized American voters in ways that we have not seen since the 1960s. By all accounts, the November 2008 Election Day proceeded quite smoothly. It is estimated that about 62 percent of eligible Americans voted in November 2008. This turnout was not as high as predicted or as we had hoped; nonetheless, it exceeded early expectations, especially during the presidential primaries. So much so, that news during the primary cycles was filled with stories of long lines, not enough ballots and voter confusion. What we learned is that voters can be motivated to vote in high numbers during the primaries and election officials have to be prepared.

Early and absentee voting for the presidential general election also exceeded expectations and by this time, States were better prepared to handle the volume. It is estimated that nearly one-third of voters cast their ballots before Election Day. Early and absentee voting was so popular in 2008 that many jurisdictions reported there were no lines on Election Day. It appears that the number of States that permit early and no excuse absentee voting will increase in response to voter demand.

Mr. Chairman, there were random problems with voting in 2008, but we should not be unduly troubled by the revelation of problems. Voting is mostly a human exercise and human beings make mistakes. Voters should be encouraged to register complaints and election officials should be vigilant about spotting problems. In response, States and local jurisdictions should collaborate with voters to diagnose the problem and adopt reasonable remedies as quickly as possible. The remedies should be aimed at improving the administration of elections so that citizens can register without encountering barriers. The improvements should help voters have confidence that their votes have been accurately recorded and counted. The improvements should also help candidates know that the process produced accurate results.



WHAT TO EXPECT

Several bills related to election reform have been introduced for this session of Congress. It is hard to know at this point which of those will move forward or if HAVA will be re-examined during this Congress. I would expect that the House Administration Committee will hold oversight hearings as it has done each year since HAVA passed, and hopefully the Senate Rules Committee will do the same.

With respect to the bills that have been introduced in Congress, the most popular topics seem to be voter registration lists, paper ballots on electronic touch screen voting systems, deceptive practices, options for days and hours of voting and improved practices to reduce the time a voter must wait in line to be able to vote.

With respect to the Obama Administration, we have not yet heard its priorities, however we do know that while in the Senate, President Obama introduced and supported bills that addressed deceptive practices and voter intimidation, voter caging, improving access to the polls and services to voters, vote by mail programs and equitable allocation of voting systems among polling places in a jurisdiction.

Mr. Chairman, in closing, I thank you again for the opportunity to discuss the Help America Vote Act and look forward to answering the committee's questions.