

Statement from Vice Chair Donetta Davidson

September 24, 2008 -- Last Thursday, September 18, at an all day Public Meeting, the Commission heard testimony from several panelists including Dr. Merle King of Kennesaw State University who offered probably one of the most poignant observations to date. He quoted a Professor from Georgia Tech who said that “voting systems are not rocket science.” Dr. King replied “No, it’s far more complicated.” He used the analogy that states cannot cancel an election in the way that NASA can scrub a launch at any time if the conditions aren’t ideal. Ready or not the election must go on.

Election officials must be ready for everything and anything that may happen. The EAC has devoted a good deal of time and resources on contingency and disaster planning. State officials have also been working overtime to prepare for the record turnout expected. However, budgets were set before all of the excitement surrounded this particular presidential race. Many of the states set their financial expenditure thresholds before they realized that they would need more equipment, supplies and staff to ensure that November 4th runs smoothly.

One of the other panelists, Doug Lewis of the Election Center, mentioned that there have been local officials who have claimed that they do not have sufficient funds to execute this year’s election and have spent less on this upcoming election than on their previous non-presidential elections. It has been suggested that states should reconsider their application of Help America Vote Act (HAVA) funds to help with their financial constraints in order to keep up with the demand for supplies and resources with this next election. However, this is a situation where states need to be very cautious that they are not supplanting state and local funds with federal funds. This idea could possibly be a good solution as long as officials have properly allocated funding to the local level while in compliance with the guidelines that govern how they spend HAVA money. However, if this solution were to be realized it could constitute a “material change” according to our proposed guidelines.

With the comments which were offered at Thursday’s meeting, it highlighted the concerns that I have had with the proposed guidelines on material changes. HAVA §253 requires that states file a state plan and that the chief State election official file a statement certifying that the State is in compliance with the requirements of §253(b). This is problematic, however, as the state plans submitted do not account for any developments or changes in budget due to unforeseen circumstances. HAVA §254(a)(11) addresses this and requires that states “conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan.” If material changes are made, they must be done in compliance with §254(a)(11)(A)-(C). This brings me to my concern with sections 3 and 4 of the Proposed Guidelines on HAVA §254(a)(11): Material Changes in the Administration of HAVA State Plans. Section 3 requires that if there is a budget change of 10 percent or more of the HAVA fiscal year’s cumulative budget or a change of more than 10 percent of the cumulative budget of the fiscal years requirement payment from one category to another an amended

state plan would be required. Additionally, section four states that if there is a revision in the means by which a State plans to achieve the HAVA objectives then an amended state plan must be submitted. If the proposed guidelines are approved, both of these sections would come into play if there were a disaster or emergency of any kind. We all remember how Hurricane Katrina wreaked havoc on the gulf coast and New Orleans. Elections are unique in that we are dealing with tight and inflexible timelines. If the suggestions in our guidelines cannot be met it will discourage the states from either following the guidelines or taking the necessary action when an emergency arises. The southern states and gulf coast know too well that even with a contingency plan, drastic measures have to be taken to meet their critical deadlines. If the proposed guidelines are implemented sections 3 and 4 will be activated if they utilized their HAVA funds to deal with their emergency situation. They would not have time to amend their state plan before taking action.

It is my strong opinion that the EAC should proceed with caution when creating guidelines that we “suggest” they follow. Best practices on how to improve an election are one matter. However, it is a different matter when we start creating guidance that is suspiciously close to regulation. Under HAVA Congress specifically took the notion that the Commission does not have regulatory authority but serves as a clearinghouse of best practices that states could voluntarily utilize.