

**Meeting Minutes**  
**United States Election Assistance Commission**  
**PUBLIC MEETING**  
**April 23, 2019**

75 SW Temple  
Salt Lake, Utah 84101

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission (EAC) held April 23, 2019. The meeting convened at 3:06 p.m. on Tuesday, April 23, 2019, in Salt Lake, Utah, at Salt Lake Marriott Downtown at City Creek and adjourned at 6:28 p.m.

**PUBLIC MEETING**

**Call to Order**

Chairwoman Christy McCormick called the meeting to order at 3:06 p.m. and thanked all present for their attendance.

**Welcoming Remarks and Opening Statements of Commissioners**

Chairwoman Christy McCormick was pleased to have a full complement of Commissioners for the first time in many years and noted that the Voluntary Voting System Guidelines (VVSG) will be out for public comment until May 29, and urged those still interested in filing to do so. Chair McCormick stressed the importance of having a Federal standard as a foundation for the operation of our voting systems, and to hear from the public, as well as various stakeholders in the election community, as to what those standards should look like.

Vice Chair Benjamin Hovland was happy to be in Salt Lake City and reviewed what was discussed at the April 10 public hearing in Memphis, Tennessee, regarding VVSG 2.0, the voluntary nature of it, and the importance of having it fully implemented by States. Vice Chair Hovland then expressed his appreciation to the witnesses for their attendance.

Commissioner Donald Palmer thanked the witnesses for their forthcoming testimony and attendance and the Commissioners for their voices during the EAC confirmation process and that he is looking forward to finalizing VVSG 2.0.

Commissioner Thomas Hicks thanked all for their attendance and feedback on VVSG 2.0 and that the Commission voted unanimously to put VVSG 2.0 out for public comment.

## **Panel I – Voluntary Voting System Guidelines Version 2.0**

Chairwoman McCormick introduced and welcomed the following panelists: Brian Newby, Executive Director, EAC; Ryan Macias, Acting Director of Testing and Certification, EAC; and Sharon Laskowski, Lead on Human Factors Working Group at NIST, testifying in place of Mary Brady, Manager at the NIST voting program.

Executive Director Brian Newby addressed the Commission to provide testimony regarding the history and background of VVSG and introduced all witnesses who will be testifying and their role in the day's meeting, including Neal Kelley, Registrar of Voters from Orange County, California; Ricky Hatch, Auditor, Weber County, Utah; Jim Dickson, Member of the Board of Advisors, who represents voters with accessibility needs; Philip Stark, an expert on postelection audits; Donetta Davidson, former EAC Chair; Steve Pearson, voting systems manufacturer; Ryan Macias, EAC staff perspective; and Sharon Laskowski, Principles and Guidelines. Mr. Newby summarized the requirements that must be met under the Help America Vote Act (HAVA), including publication of the notice of proposed guidelines in the Federal Register, an opportunity for public comment on the proposed guidelines, an opportunity for public hearing on the record, and publication of the final guidelines in the Federal Register. He then handed the discussion over to Ryan Macias.

Acting Director Ryan Macias addressed the Commission to provide testimony regarding a background on VVSG and HAVA. He explained that the public comment period began on February 28, 2019, and concludes on May 29, 2019. Mr. Macias highlighted the testimony of Mark Goins, Coordinator of Elections for the State of Tennessee, at the prior public hearing conducted on April 10, 2019. Mr. Macias reviewed resolutions adopted by EAC advisory boards, including "Ensuring Accessibility and Security," and Resolution 2018-02, and then detailed the substance and quantity of public comments received to date. In closing, Mr. Macias thanked the Commissioners for prioritizing the VVSG 2.0 and for providing multiple opportunities for the public to provide input on recommendations and the cooperation and effort undertaken in its development.

Dr. Sharon Laskowski addressed the Commission to provide testimony regarding background on VVSG versions, actions that led to a new structure for the VVSG, and steps that were taken to utilize nearly 500 experts from the election community in the development of the VVSG 2.0 by the formation of a set of public working groups. Dr. Laskowski explained that the VVSG 2.0 principles and guidelines were developed and drafted based on NIST research.

### **Questions and Answers:**

In response to Chairwoman Christy McCormick's inquiry as to whether the principles and guidelines that are out for comment now are specific enough for voting system design and testing, Mr. Macias answered that that is not the intent of the VVSG 2.0, but rather they are a set of best practices and to provide for testing certification, decertification, and recertification of voting systems. Dr. Laskowski explained that having high-level principles and guidelines allows for flexibility in interpretation.

Vice Chair Benjamin Hovland inquired as to whether the structural change from VVSG 1.0 to 2.0 is reflective of industry standards, to which Dr. Laskowski responded yes, and an example would be the referral to current accessibility standards under Section 508.

Commissioner Donald Palmer asked Dr. Laskowski to expound upon Principle 4, interoperability; Principle 6, privacy; Principle 8, robust, safe, usable, and accessible voting systems; and Principle 10, ballot secrecy. Commissioner Palmer then inquired of the entire panel how the Commission should balance the security and accessibility requirements, which can often be competing interests, to which Dr. Laskowski and Mr. Macias responded that it is covered under the VVSG 2.0. Mr. Newby explained that the text of HAVA is most specific on accessibility and the ability to cast a vote independently and verify it independently and that HAVA is less specific on security and that a legal review by General Counsel and a vote by the Commission may be required. Commissioner Palmer then inquired of Executive Director Newby whose responsibility it is to make sure HAVA is complied with, to which Mr. Newby replied the Election Assistance Commission is the final arbiter, but that Mr. Newby, as Executive Director, makes recommendations to the EAC.

Commissioner Hicks inquired into the public's participation in the process and how to move forward with a next iteration and ensuring the discussion among the public working groups remains professional and productive, to which Dr. Laskowski explained how NIST had to step in to control one particular working group. Commissioner Hicks inquired of Mr. Macias about the four public comments received since the first public hearing on April 10, 2019, and Mr. Macias summarized them, all substantive and all supportive of VVSG 2.0. Commissioner Hicks commended all who have participated in the process to get VVSG 2.0 finalized.

In response to Chairwoman McCormick's inquiry as to the Commission's role in the process after decoupling the requirements from the principles and guidelines, Mr. Macias explained that the EAC will set the policies, but the first thing that must be done is the adoption of the VVSG 2.0; second, adopt a policy that the testing certification, decertification, recertification process should directly align to the VVSG 2.0; and third, formulate and

draft those testing and certification policies. Chairwoman McCormick asked if the Commission could set policy before passing the principles and guidelines, to which Mr. Macias responded that it is possible that policy could be part of the VVSG since, from his reading of HAVA, they should be separate and that technically the order doesn't matter.

In response to Vice Chair Hovland's inquiry about whether requests for interpretation (RFIs) are analogous to a clarification on a future requirement, Mr. Macias responded that Testing and Certification staff would make interpretations on the current VVSG. Mr. Newby clarified that the policy manuals have expired for 1.1 and that RFIs apply to existing requirements, not new ones, and that it is not analogous to the RFI process.

Chairwoman McCormick inquired whether the EAC has approached VVSG 1.0 and 1.1 incorrectly, given Mr. Macias' reading of HAVA, he responded yes, potentially.

Commissioner Palmer asked if the substantive work of the principles and guidelines, the structure, was a recommendation of the advisory boards, and Mr. Macias agreed that it was unanimously recommended by the TGDC and the Standards Board.

## **Panel II – Voluntary Voting System Guidelines 2.0**

Chairwoman McCormick introduced and welcomed the second panel of witnesses: Philip Stark, Member, Board of Advisors; Ricky Hatch, Auditor, Weber County, Utah; Neal Kelley, Chair, VVSG Subcommittee, Board of Advisors; and Jim Dickson, Member, Board of Advisors.

Dr. Philip Stark addressed the Commission to provide testimony regarding the principles of VVSG 2.0 and specifically language concerns and a recommendation to include a glossary in the principles to define important terms like ballot, cast, cast vote record, and audit. Dr. Stark commented on Principle 4, interoperability; 5.1, consistent experience of voters throughout all modes of voting; 5.2, voters receiving equivalent information and options on all modes of voting; 6.2, marking, verifying, and casting ballots without assistance of others; 7, votes marked, verified, and cast as intended; 7.1 should include requirements for the usability of hand-marked paper ballots; 7.2, election workers can use all the controls accurately and have direct control of all ballot changes; 8.3, the voting system measured with a wide range of represented voters, including those with and without disabilities; 8.4, the system being evaluated for usability by election workers; 9.4, the system supporting sufficient audits; 13 and 14.2, wireless connections or cellular communication ports; and 15.4, cybersecurity best practices.

Mr. Ricky Hatch addressed the Commission to provide testimony regarding the VVSG 2.0 providing trust and convenience to our election officials and the voting process and how the EAC can set the standards to protect the system. Mr. Hatch expressed a desire that the principles and guidelines be solid and broad enough that they function as the framework established by HAVA and that the more detailed requirements and test assertions can be more nimbly adapted to address emerging technologies and threats whether or not the EAC has a quorum.

Mr. Neal Kelley addressed the Commission to provide testimony regarding his thoughts on the need for new standards and his perspective on the process to date and the VVSG process, election security, ballot integrity, and vulnerabilities as they exist in today's election landscape. Mr. Kelley opined that there has been a thoughtful and methodical approach as it relates to the process of VVSG 2.0 to date and that he is impressed with the level of inclusion of a broad cross-section of subject matter experts that developed the high-level principles and guidelines, and also transparency of the process. Mr. Kelley expressed concern about the manufacturers' implementation timeline and the possibility of the EAC losing their quorum again.

Mr. James Dickson addressed the Commission to provide testimony regarding the principles and guidelines and what they mean for the disability community, particularly that the VVSG 2.0 does not address mail-in voting, which has grown exponentially in the past few years, and also concerns regarding the hand-marked paper ballot.

#### **Questions and Answers:**

Vice Chair Hovland asked Mr. Kelley to discuss or summarize the Technical Guidelines Development Committee's (TGDC) deliberations around the scope and structure of VVSG 2.0. Mr. Kelley responded that the vote took place the day he arrived at the TGDC and so could not provide any insight. Vice Chair Hovland then inquired of Mr. Kelley as to how the lack of innovation in VVSG 1.0 impacted his office and if VVSG 2.0 will be more responsive to his needs, to which Mr. Kelley responded that part of his system is on an unsupported version of Windows and also, in terms of security, patching a system under 1.0 is nearly impossible. Vice Chair Hovland inquired of Mr. Kelley and Mr. Hatch whether they believe that VVSG 2.0 standards are more likely to be adopted by States, to which they both agreed that the standards are likely to be adopted. Vice Chair Hovland then asked Mr. Dickson about Principle 4 on interoperability and if he envisions that leading to more accessible equipment and innovation, to which Mr. Dickson responded that he believes it will.

Commissioner Palmer inquired of Mr. Hatch, Mr. Kelley, Dr. Stark, and Mr. Dickson their thoughts on innovation versus risk, to which Mr. Hatch responded that sound operability and a trusted process should be paramount. Mr. Kelley responded that flexibility in ballot design is important but that security is more so. Dr. Stark explained that it's possible to ensure that substituting some module for a different module that exposes the same data formats and still functions equivalently. Mr. Dickson believed that an umbrella system is not ideal in our country that has as diverse and complex an election administration system as we do.

Commissioner Hicks spoke about risk-limiting audits and thanked Dr. Stark for his work in that area and inquired of the panel of other ways to improve the process besides risk-limiting audits, to which Dr. Stark replied that he was not intending to suggest that the words risk-limiting audit should appear in the VVSG and that, at a minimum, we should be auditing the tabulation to make sure that the reported winners really won. Commissioner Hicks asked Mr. Dickson his thoughts on voters using their own device to cast a ballot and then have that ballot printed out or somehow verified, to which Mr. Dickson responded that he is hopeful that voters may one day use their own technology configured for their specific needs because accessibility is complex and people's disabilities vary so widely.

Commissioner Palmer inquired of Dr. Stark about internet connectivity and barcoding in terms of election security, to which Dr. Stark responded that he believes the devices that are recording and tabulating the votes should not be internet-connected but that poll books could be and that barcoding may be useful for tabulation but not for audits and recounts. Mr. Kelley agreed with Dr. Stark concerning internet connectivity.

Chairwoman McCormick inquired of Dr. Stark his opinion on how the Commissioners ensure the principles are being carried out if they compartmentalize the requirements and test assertions from the higher-level principles and guidelines, to which Dr. Stark responded that he believes it's a critical issue that he doesn't have an answer to. Chair McCormick followed up on that inquiry to ask Mr. Hatch what the impetus for Congress would be to replace Commissioners in the absence of a quorum if the Commissioners separated the requirements from the principles and guidelines, to which Mr. Hatch responded that the Commissioners should always have the final say and that if there is no quorum, the EAC should devise a policy to handle such an occasion. Chair McCormick stated that she would welcome a draft policy addressing this issue.

**The Board recessed at 5:16 p.m. and reconvened at 5:21 p.m.**

### **Panel III - Voting Systems Manufacturers**

Chairwoman McCormick introduced and welcomed the third panel of witnesses: Steve Pearson, Election Systems and Software (ES & S), an EAC-registered manufacturer; and Donetta Davidson, former Commissioner, former Secretary of State, representing Dominion Voting, an EAC-registered manufacturer

Ms. Donetta Davidson addressed the Commission to provide testimony regarding the VVSG 2.0 and how it could implement, impact, and take advantage of new and existing voting systems. Ms. Davidson explained that Dominion Voting is working hard to prepare for VVSG 2.0 adoption and that manufacturers cannot move forward with substantive development and certification efforts without test assessors with accredited laboratories validating that systems comply with the requirements. Ms. Davison suggested that it may be necessary to establish a clear process to allow for provisional certification for existing equipment.

Mr. Steve Pearson addressed the Commission to provide testimony regarding the adoption of the VVSG 2.0 principles and guidelines and that ES & S has been an active participant in the working groups focused on developing these guidelines. Mr. Pearson reviewed what it takes to build a voting system to the new standards and discussed the implementation of VVSG 2.0 and the effective date and the need for ongoing support of current VVSG standards. Mr. Pearson discussed the importance of VSTL accreditation, EAC oversight, and having a clear timetable that does not have a forced sunset period.

#### **Questions and Answers:**

Vice Chair Hovland inquired of the panelists the impact on manufacturers when the Commission has no quorum, and both witnesses explained the difficulty of that circumstance and that they are hopeful that the Commission will continue to have a quorum in the future. Mr. Pearson added that a quorum is required to maintain a minimum of two accredited labs, and that without that, the throughput stops. Mr. Pearson commented that the principles and guidelines are great but that, as a manufacturer, they need the requirements to start designing and planning their systems, to which Ms. Davidson agreed.

Commissioner Palmer asked whether the speed in which the Commission works would impact the speed with which manufacturers are able to design and implement new systems, to which Mr. Pearson agreed, but stated that having systems ready by the 2020 Presidential election is not possible. Commissioner Palmer then inquired how the EAC can protect

the current manufacturing market, to which Ms. Davison suggested the EAC not set policy that conflicts with current State policy.

Commissioner Hicks asked whether the witnesses feel the principles and guidelines go towards the effective supply-chain aspects of manufacturing systems, to which Mr. Pearson responded that ES & S is not relying on the principles and guidelines or standards on how they respond to the supply chain and that they are actively and aggressively managing the whole supply chain process. Commissioner Hicks inquired whether the witnesses' companies have been involved in the public working groups, to which they both responded that they have and that there could be improvements and that some working groups are more productive and professional than others and that some working groups actually had somewhat of a chilling effect on vendor input. Commissioner Hicks asked if systems in conformance with the VVSG 2.0 principles and guidelines could be in place before the 2020 Presidential election, to which both witnesses responded that would not be possible.

Chairwoman McCormick asked what the issues were with VVSG 1.1 that prevented the manufacturers from bringing systems in under that standard since the manufacturers had four years to do so, to which Mr. Pearson replied that the effort required to update from 1.0 to 1.1 didn't make good business sense since 2.0 was already begun. Mr. Pearson also explained that their customers didn't need or want the upgrade and would wait for 2.0. Ms. Davidson agreed. Commissioner McCormick inquired what the effect would be on the manufacturers if staff were able to update or change the requirements, and Mr. Pearson expressed his respect for EAC staff but that that would not be wise. Ms. Davidson agreed. Mr. Pearson went on to say that the VSTLs, NIST, EAC, and the manufacturers should be involved in a change or update to the requirements and that there should be a comment period.

Vice Chair Hovland followed on Chairwoman McCormick's inquiry asking about the necessity of an appeal process in the event of a requirements change or update, and Mr. Pearson opined there should be an appeal process.

## **Public Commenters**

Harvie Branscomb from ElectionQuality.com provided testimony to the Commonwealth regarding his concern about the opportunity for innovation to remain active inside the industry that provides election systems and that the requirements that come out might hinder the process. He expressed other concerns regarding redaction, digital codes, indirect identifiers, minimal use of hands in casting votes, cryptography, selections-only

ballots, common data formats, and use of the words "cast," "count," and "ballot" in the requirements.

Andrew Riggle, Disability Law Center Public Policy Advocate, provided testimony to the Commission regarding paper ballots, security and accessibility, ballot-marking machines, audio instructions, keypads, and the vote-at-home movement.

Senator Daniel Ivey-Soto, State of New Mexico, provided testimony to the Commission regarding decision-making in the absence of an EAC quorum, that it should be dispensed with as desiring expediency over process and is antithetical to election administration. Senator Ivey-Soto also requested that the EAC define the term "ballot."

### **Adjournment**

Chairwoman McCormick made a motion to adjourn the public meeting, which was seconded by Commissioner Donald Palmer.

**The Public Meeting of the Election Assistance Commission adjourned at 6:28 p.m.**

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