

United States Election Assistance Commission – Board of Advisors Meeting

Meeting Minutes – April 27-28, 2005

Herewith are the Minutes of the meeting of the United States Election Assistance Commission (EAC) Board Of Advisors held on Wednesday, April 27, through Thursday, April 28, 2005. The meeting convened on April 27 at 8:30 a.m. in Cambridge, Massachusetts at the Marriott Boston Cambridge Hotel, 2 Cambridge Center and adjourned at 12:41 p.m. on April 28, 2005.

Call to Order: Chair Lewis called the meeting to order at 8:30 a.m.

Roll Call: Chair Lewis called the roll and found present Secretary Chris Nelson, Ms. Mary Herrera, Secretary Mary Kiffmeyer, Secretary Rebecca Vigil-Giron, Mr. Tom Wilkey, Ms. Wendy Noren, Ms. Helen Purcell, Ms. Beverly Kaufman, Mr. David Orr, Mr. Tony Sirvello, Mr. J.R. Harding, Mr. Noel Hillman, Mr. Hans von Spakovsky, Ms. Polli Brunelli, Mr. Wesley Kliner, Mr. Thomas Shortbull, Mr. Joseph Crangle, Ms. Sue Sautermeister, and Secretary Robin Carnahan. Chair Lewis also recognized that Mr. Jim Dickson and Mr. Christopher Thomas were not present at roll call, but were scheduled to arrive later in the day.

Changes in Agenda: Chair Lewis asked that the Board not take any official votes until they adopted a set of bylaws in the following day's business session. He then announced that the EAC Commissioners' Q and A session would be moved to 8:30 AM the following day.

Updates and Reports: Chair Lewis asked each member to describe a few concerns they wished to address. The members raised concerns in an effort to improve the development process of the Voluntary Voting Systems Guidelines. (VVSG). Amongst the various concerns raised were members' desires to discuss and integrate public comment into the process; concerns regarding the states' lack of guidance in acquiring systems prior to the release of the final voting systems guidelines; the development of Board of Advisors bylaws; means to improve voter registration systems and reduce voter fraud; and various other obstacles facing EAC, State and local election officials in administering the mandates set forth in HAVA.

EAC Update: Thereafter, Chair Lewis introduced EAC EAC Chair Hillman, who provided the Board with an update on EAC. EAC EAC Chair Hillman gave a brief

summary of the challenges facing EAC, as well as milestones from the previous year, including its move in April 2004 to its new office space at 1225 New York Avenue, the publication of State plans, disbursements of requirements payments to States and issuance of best practices

EAC EAC Chair Hillman went onto to discuss the schedule of payments being

made to the states. She noted that Alaska, Guam and New York had not yet received any Title II payments because they had not met the administrative complaints procedures or five percent matching requirements, mandated by HAVA. Additionally, she noted the schedule of 2005 meetings and discussed EAC's intention to hold public hearings in the field.

EAC EAC Chair Hillman then reported on EAC's success in obtaining an

increase in its 2005 budget to \$10 million for its operating budget and \$4 million for research projects. These increases allowed EAC and the Technical Development Guidelines Committee (TGDC) to move forward with the National Institute of Science and Technology (NIST) on the development of the Voluntary Voting System Guidelines (VVSG). EAC EAC Chair Hillman indicated that of this \$14 million budget, approximately half is devoted including the development of guidance and VVSG. EAC's fiscal year 2006 budget request is approximately \$17 million.

Furthermore, EAC EAC Chair Hillman discussed the FY 2005 cap of 22 full-

time employees and EAC's efforts for FY 2006 to have that number increased to 26, so that EAC may properly take over lab accreditation, voting system certification and the ongoing review and auditing of all state reports. EAC has decided to contract out a lot of the work it could do internally if it had more staff. Chair Hillman then described how the budget request process works.

EAC EAC Chair Hillman then told the Board that the Commissioners would receive recommendations from the Technical Guidelines Development Committee (TGDC) by May 9th. Thereafter, the guidelines will be posted for public comment for 90 days, at the end of which, EAC will make changes to the VVSG as appropriate. During the comment period, EAC plans to hold 3 public hearings. The entire process should take approximately 120 days and is required by HAVA.

EAC EAC Chair Hillman provided a summary of the research and study projects EAC is working on, including issuing guidance on provisional voting, the impact of voter ID requirements, issuing statewide voter registration database guidance, studying and surveying Election Day 2004, UOCAVA, and NVRA as required under HAVA. The Election Day study will establish baseline information and statistics for further study and comparison. In addition, EAC will do a study on electronic voting and a report on Free Absentee Ballot Postage some time in the near future.

EAC EAC Chair Hillman stated that all EAC meetings, including those of the Board of Advisors and Standards Board, are open to the public. General Counsel Juliet Thompson stated that the Board would be able to have telephonic meetings concerning upcoming studies as long as they are published.

Mr. Noel Hillman stated his concern that EAC does not yet have an Inspector General to oversee the process of disbursing funds and offered his help in securing Inspector General services for EAC. EAC EAC Chair Hillman stated that the Commission has been working to establish a cooperative relationship with another agency for the use of Inspector General services and they are close to establishing such a relationship. Commissioner Soaries added that they are aware of the need to secure such services.

Commissioner Martinez commented on the interface between the Single State Audit Act and the duties of the Inspector General and stated that the Commissioners recently received guidance from GAO. In addition the Comptroller General has an obligation to audit funds at least once during the life of the funds.

Commissioner Martinez further commented that although the Commission reviewed the state plans that were submitted, its due diligence is limited to certification that a state had received a Title II payment, had filed a state plan published in the Federal Register, had an administrative complaint procedure in place, and had put up a 5 percent match. EAC will rely on the states to inform itself when it makes a material change to its plan, but will also perform audits to ensure that funds are being used for the intended purposes.

Chair Lewis expressed understanding that data collection at the local levels can sometimes be difficult, but stated that the first data collection instrument was thorough and served as a good benchmark.

Chair Lewis introduced Mr. Mike Sciortino, Chair of the Standards Board, who stated that the Board recently elected and organized an executive board. The executive board met in Washington, DC with members of the Advisory Board and National Academy of Sciences to develop a framework for the proposed guidance on Statewide Voter Registration Database List. Commissioner Martinez thanked Chair Sciortino for his leadership and guidance. Commissioner Martinez also indicated that the Standard Board's meetings would be transcribed and open to the public. Mr. Wilkey requested that the Voting Standards Subcommittee convene briefly during the break.

Recess: The meeting was recessed until 10:45 AM.

Reconvene: When the meeting reconvened, Chair Lewis stated that those wishing to propose changes to the bylaws should discuss proposals at 1:15 p.m. at the back of the room towards the end of the working lunch. He also indicated to the Board changes to the Board contact roster should be submitted to Sheila Banks at EAC, who contact information is on the last page of the roster of the Board of Advisors. Chair Lewis then asked Mr. Wilkey, Chair of the Board's Standards Committee, to provide an update on voting systems standards.

Voting System Standards: Mr. Wilkey stated that he would be available to review the TGDC's proposed Voluntary Voting System Guidelines over the next few days. He encouraged Board Members not to be intimidated by the technical data and to ask for help in understanding the guidelines when necessary. He described the voting standards process as open and transparent and expressed amazement at its progress. Mr. Wilkey then stated that the 1990 standards took five years to develop and that there was a gap of time during which election officials determined what changes should be made to the standards.

Under HAVA, the TGDC and NIST had to produce its product in nine months and Mr. Wilkey stated that it was a monumental effort. Mr. Wilkey suggested that members of his committee, members of the board who were on the TGDC and a parallel group from the standards board convene for a day to get a briefing on the document. Mr. Wilkey asked Ms. Thompson if the contents of that meeting would be displayed on the website or otherwise be made available for the two groups. Mr. von Spakovsky asked when the latest version would be available and Mr. Wilkey responded that it would probably be available in the middle of June and that it

would be available on the website. Mr. Wilkey then encouraged everyone to read the overview enclosed in the booklets as a start.

Chair Lewis suggested that the Board of Advisors work like a legislative body and listen to recommendations its committees make to it. Commissioner Martinez informed Mr. von Spakovsky that the Commission intends to transmit the initial set of recommendation to Board of Advisors members when they receive them.

Chair Lewis asked Commissioner Martinez if there was sufficient time for Mr. Wilkey's committee and TGDC members to get together during the 90-day period. Commissioner Martinez stated that there would be ample time and that HAVA requires a minimum period of 90 days for review but as the Chair suggested, that period may extend longer than 90 days if necessary to ensure due diligence. Secretary Kiffmeyer suggested that the Board try to give guidance as early in the process as possible. Commissioner DeGregorio then suggested to Chair Lewis to request that Board members who worked with NIST on the standards in the past discuss their experiences.

EAC EAC Chair Hillman stated that the EAC has encouraged Board Members to review information as it became available and has sent letters in advance of the dates documents would be posted so that they could plan accordingly. Mr. von Spakovsky indicated concern over when Board Members would be getting a draft of voting standards for comments and EAC EAC Chair Hillman stated that the Commissioners would take his suggestion under advisement that the Board get a draft when the Commissioners receive their draft.

Chair Lewis requested that Ms. Purcell and Mr. Harding comment on their experiences as members of TGDC. Ms. Purcell stated that the TGDC broke into three subcommittees and met by conference call every week or every other week. In addition the TGDC had several plenary sessions and planned to issue the recommended VVSG to the Commissioners by May 9, 2005. Ms. Purcell stated that she was on the Security and Transparency Subcommittee and worked on Voter Verified Paper Audit Trail (VVPAT). Ms. Purcell also brought attention to the fact that what has been accomplished by TDGC to date is on the NIST website.

Mr. Harding stated that the reason the TGDC broke into committees is because it was the only way to manage the work since the document is so large. The TGDC also informed the NIST

officials of election officials' limitations and practical needs and resources. Mr. Harding suggested that a process be developed so that Board members can ask prompt questions to narrow the focus of comments.

Ms. Noren encouraged everyone on the Advisory Board to read the documents on NIST's website and to digest the technical standards as part of their legal obligation. She also stated that the Advisory Board has a huge duty to assure that standards are in place for the 2006 election.

Ms. Purcell commented that most election officials have been using the same equipment for decades and that the goal is long-term. She also stated that she was impressed with how fast the NIST was able to assimilate election information and how much time they devoted to learning about elections.

Secretary Carnahan asked if Version 1 would be finalized on May 9, 2005 and if Version 2 would be available by December 31, 2005. Ms. Purcell responded that they were aiming to finalize Version 2 in November. Secretary Carnahan then asked if vendors that would be able to meet the new guidelines as required by state law.

Chair Lewis stated that it was a false expectation to have the standards coincide with the availability of new equipment in compliance with standards.

Mr. Dickson asked if the final point of the document would be May 9, 2005, or after the comment period and Chair Lewis responded that it would be after the comment period and publishing in the Federal Register. Chair Lewis also indicated that there could be changes between the May 9, 2005, version and what goes into the Federal Register. Mr. Dickson finally asked what the thinking was in terms of a one-time purchase and the existence of evolving standards. Mr. Harding responded that election officials would need to purchase equipment as well as maintenance agreements with their sums.

Secretary Vigil-Giron stated that her state (NM) was moving toward uniformity of all systems and looks forward to the enactment of standards as a positive evolution.

Mr. Orr expressed confusion about the difference between the reality of purchasing compliant systems and the reality of the legal obligation to purchase compliant systems. Chair Lewis responded

that the first legal basis is that machines bought in compliance with the 2002 standards are still operable. However, the reality is that some political groups will expect the standards to be adopted immediately. Chair Lewis understands the frustration that follows from such expectations, but it is the reality.

Commissioner Martinez reiterated a point Ms. Noren made, that each state has to look at its own state law to determine which guidelines to follow and what equipment will be in compliance. The Commissioner also indicated that guidelines on VVPAT were intended to be the first of several different ways to achieve independent verification. Guidelines on others would be addressed in future iterations of VVSG.

Secretary Nelson asked what impact Version 1 will have on ITA certification and Commissioner Martinez responded that the Commission will consider whether grandfathering is appropriate in that regard. The TGDC has indicated to the Commissioners that any policy on grandfathering should be decided by the EAC and not decided by the TGDC.

Secretary Kiffmeyer expressed her concern that the Board considers public perception and she complimented the Board on their discussion.

Mr. Dickson asked if putting the expectation of updates into a contract with vendors would result in their taking advantage of that reliance. Ms. Noren stated that there may be a holdup problem, but that with guidance from NIST and EAC, vendors should be able to offer more accurate pricing.

Mr. Kliner and Commissioner Martinez discussed how grandfathering standards could affect legislatures' ability to plan for implementing new guidelines. Commissioner Martinez discussed the possibility of issuing guidelines with an implementation date far enough in the future to allow states to effectuate the changes. Ms. Paquette cautioned that Volume 2, which is available on NIST's website, may not accurately represent the balance in security systems that EAC wishes to achieve.

Recess and Reconvening: The meeting recessed for lunch at 12:13 PM and reconvened at 1:34 PM.

State Voter Registration Lists: Commissioner Martinez informed that under sections

311 and 312 of HAVA, EAC is obligated to issue guidance on the implementation of the administrative requirements in Title III. This includes Voting System Standards under Sections 301-303.

Commissioner Martinez indicated that EAC convened a working group to recommend draft guidelines on Statewide Voter Registration Lists. Among the members who participated were Secretary Nelson, Secretary Vigil-Giron, Ms. Sautermeister, Ms. Noren and Mr. von Spakovsky.

Commissioner Martinez noted that tab 7 in the Board's briefing book contains the draft guideline, which was published in the Federal Register on April 18, 2005.

EAC EAC Chair Hillman stated that in conversations with Members of Congress, she has suggested that they reserve judgment about how and when HAVA dollars are spent until critical deadlines have been met by the States. Although states have an idea of the cost of replacing voting systems, many are finding that it will be much more expensive to develop, implement or update the voter registration. They may therefore have to amend their HAVA spending plans.

Secretary Kiffmeyer stated that it was not explicit in the language in the draft guidance that the state list be the official list. She also expressed concern about the definition of the word "expedited." Commissioner Martinez responded that the working group gave much attention to the language in Section 303(a)(1)(VI). As an example, Colorado elected to use a real-time transfer to comply with the expedited basis language in the statute. However, other states may interpret "expedited" differently. California currently plans that its statewide system will pull information from local databases, which will not happen instantaneously. The working group agreed that the term expedited should mean at least once every 24 hours.

Secretary Kiffmeyer stated that her question had more to do with the time between when a voter is issued a paper card and when it is entered into the system. Commissioner Martinez stated that once the information actually goes into the local official's database, the guidance recommends an upload every 24 hours. The 24-hour period does not start until the local official enters the information into the database.

Secretary Nelson stated that the working group recognized the problems election officials might have in getting many

registrations at once. He also thanked EAC and other members of the working group for a good and productive experience.

Mr. Dickson asked about obligations under Motor Voter and Commissioner Martinez indicated that the statute requires that there be coordination of the statewide voter registration list with “other agency databases.” The statute also requires that there be regular coordination between the Statewide Voter Registration List and death records and felony status. Question 10 of the draft guidance deals with how the Statewide Voter Registration list should be coordinated with other registration databases, which includes agencies defined by NVRA. Commissioner Martinez indicated that there was a great deal of discussion in the working group about the obligations created under Motor Voter.

EAC Chair Hillman noted that EAC has fielded concern from various groups that certain social service agencies are not meeting their responsibilities under NVRA. In some cases, when the agencies are not meeting their obligations, election officials may not follow up with them.

Mr. Thomas stated that the data will show who is complying and who is not. He asserted that where less than 50 percent of a state’s registrations come through motor vehicles, that state is probably not doing their job in those offices. Mr. Thomas noted that HAVA specifically does not use real-time language and although real-time may be a nice concept, he doesn’t believe it’s necessary. In his state of Michigan, they do an update every 24 hours. Mr. Thomas stated that the draft guidance do not sanction bottom-up systems that are not functional. He stated that functionality should include the NVRA purging processes.

Secretary Kiffmeyer stated that her state of Minnesota built a real-time system for \$5.3 million. She then asked Ms. Herrera how long it took to enter her state’s 13,000 registrations. Ms. Herrera responded that it took about 3 weeks to enter all the registration forms because there were duplicates and other problems in verifying the entries.

Mr. Kliner was appreciative of the language in response to question 10 because the worry in Tennessee was that integration in real-time would increase the chance for a security breach. He indicated that he thought the 24 hour batch process would allay fears that local elections might have about computerized processes.

EAC Chair Hillman noted that this was the first time EAC put together a working group and the Commission was pleased that it went so well. Commissioner Martinez expressed his appreciation for the people who participated in the process and invited comments in the upcoming weeks.

Other Topics: Chair Lewis asked if anyone had a subject matter they wished to discuss. Ms. Sautermeister emphasized the importance of the voter registration process, especially as it concerns states being able to share information. Chair Lewis stated that one of the long-term goals would be integration from state-to-state, but until the state databases are functional in that manner, it would be unlikely.

Ms. Purcell informed about changes being proposed by the state legislature to Arizona's voter laws. She noted one such measure that would require identification and disallow a person from receiving a ballot if they did not have identification.

Mr. Shortbull stated that South Dakota uses an affidavit system that he thinks works out well. He complimented Secretary of State Nelson on his efforts to work out glitches in the affidavit system. He expressed concerns that voter ID requirements could result in denial of civil rights. Commissioner Martinez stated that EAC is limited by NVRA and HAVA, but that Justice has enforcement authority under Title III of HAVA. HAVA does not preclude a state from imposing an ID requirement. HAVA also states in Section 303(b) that if someone is unable to vote because of a lack of ID, they should still be able to cast a provisional ballot.

Mr. Dickson stated that the Carter-Baker Commission is considering the issues of identification requirements and state interactive voter registration databases.

Chair Lewis stated that the Board would bypass a discussion of voter registration problems for another time and invited comments on the National Mail-In Registration Form.

Karen Lynn-Dyson introduced herself as the research manager for EAC. She advised the board about EAC's efforts to update the NVRA mail-in voter registration form. She also noted that EAC is considering the idea of a web-based form that would be able to be updated frequently. EAC will produce a Spanish version of the form and is looking at translating the form into six other languages. The final draft should be ready for public comment in July.

Chair Lewis asked if EAC has determined that a registration must have a driver's license number or other unique identifier in order to be a valid registration. Commissioner Martinez responded that EAC has not given an interpretation to that particular question. Mr. von Spakovsky of the Department of Justice stated that voter registration for Federal office cannot be accepted or processed by a state unless the application includes a driver's license or similar identification.

Mr. Wilkey pointed out the problem of the high number of citizens who cannot read or write. He recommended that EAC have the form reviewed by a literacy expert and commented on how some states use graphics to make the form easy to read and fill out.

Secretary Vigil-Giron pointed out that there are three provisions of the Voting Rights Act that are due to expire in 2007 that will affect minority voters. Thirty-six or 37 states were told that they had 5 percent language minority populations and had to include election materials in those languages.

Provisional Voting: Chairman Lewis stated that the next topic was provisional voting and that there may be additional time for other topics at the end. He asked for a starting point for the discussion.

Commissioner Martinez briefed the board on implementation of provisional voting. He noted the variance among states regarding when a provisional vote would be counted. He stated that 27 states in the country require that for a provisional vote to be counted, it had to have been cast in the voter's assigned precinct. Ohio is an example of one of those states.

Other states provide that if you vote in the correct county, but not the correct precinct, at least a partial ballot will count for Federal office. Georgia and New Mexico are examples of these states.

EAC will likely develop practices on implementing provisional voting. He noted that EAC held a public hearing on this issue in Columbus, Ohio and found that many states had not codified their provisional voting procedures. Florida is an example of one state that has codified its provisional voting procedures.

Commissioner Martinez further stated that EAC will undertake an effort to survey all states to determine how states are handling implementation of provisional voting.

EAC Vice Chair DeGregorio stated that the use of statewide databases throughout the country should help eliminate provisional voting for a lot of people. The overall goal is to have as few provisional ballots as possible. He also noted that EAC is collecting data on the numbers of provisional votes cast and counted in the 2004 election.

Several board members commented on various efforts being made by states and local jurisdictions to assure accurate voter lists and access to this information on Election Day by poll workers.

Ms. Herrera asked why EAC hadn't come up with guidelines on how to count or process provisional ballots since provisional voting is a HAVA requirement. Commissioner Martinez responded that HAVA gives responsibility for methods of compliance and implementation to the states. EAC will issue guidance and best practices to inform jurisdictions but the states will have to promulgate their own procedures.

A general information discussion ensued about various procedures and rates of provisional votes cast and counted.

EAC Vice-Chair DeGregorio stated that preliminary statistics collected by EAC indicate that in states that had a statewide database in place for the 2004 election, about 6/10ths of one percent of registered voters used provisional ballots. In states that did not have a statewide database, the rate is about 1.4 percent, approximately double. However, there was no difference in ballots that were ultimately counted; 65 percent in states with a statewide voter registration system and 64.4 percent in states without a statewide voter registration system.

Chair Lewis stated that provisional voting was obviously a contentious issue because elected officials cannot agree on how to handle it. EAC Chair Hillman added that HAVA leaves it up to the states to define the jurisdiction and determine how and when a provisional ballot will be cast. Nonetheless, she encouraged the board to exercise its prerogative and provide advice and suggestions to EAC on how it should approach its various areas of responsibility.

Studies and Data Collection: Chair Lewis then introduced the next area of discussion, EAC studies and data collection.

EAC Chair Hillman pointed everyone to tab five of their binder, the Help America Vote Act tab. At the beginning of Section 241, it states that on a periodic basis, EAC shall conduct studies. Section

241 specifies 18 areas and a 19th on such other matters as EAC determines appropriate.

Sections 271 through 283 talk about grants for research on voting technology improvements and testing of equipment and technology, but those provisions are not funded by Congress, so EAC does not have money to provide grants for research on voting technology improvements or to do pilot program testing. EAC nonetheless is conscious of its role in certifying labs and will find money to do testing as appropriate.

Sections 302 through 305 address provisional voting, voting information, computerized statewide voter registration list requirements, minimum requirements and methods of implementation left to the discretion of the states. All of these sections govern the areas where EAC will issue guidance. EAC has put mechanisms in place to complete studies required by NVRA and overseas voting and EAC Chair Hillman anticipates that the data EAC collects in the 2006 election will guide the work it does afterwards.

EAC Chair Hillman noted that EAC has scoped out the basic framework for the 2006 research and study agenda. By the end of August 2005, EAC will have broadly identified its research agenda and study activities for 2007.

Commissioner Martinez stated that EAC is trying to use their appropriation for 2005 to focus on their obligations under the statute; development of voting system guidelines through NIST, the convening of statutory bodies, the development of guidance pursuant to Sections 311 and 312, and the mandated research. The only project that EAC is doing that is discretionary is the Election Day survey, which was sent to the states and was important for establishing a benchmark. Section 241 of HAVA has a laundry list of items that Congress has suggested and that EAC should research eventually. The question is whether there will be funds available to do some of the suggested research, and the Commissioners are interested in input from the Board on what areas of Section 241 EAC should explore.

Chair Lewis stated that during the break, he was approached by two officials, one state and one local, who requested that EAC invite comment from election officials before they release the Election Day survey to the public. Chair Lewis then asked if the Commissioners had determined what studies they planned to do in 2006 and 2007.

EAC Chair Hillman responded that EAC had not yet identified specific studies it would conduct but rather had established a broad framework that was included with its FY 2006 budget request.

Chair Lewis requested that members of the Board look at Section 241 and then facilitated a discussion that resulted in the board recommending prioritized areas of study under HAVA Section 241.

The top five areas recommended are:

- (8) Methods of recruiting, training and improving the performance of poll workers.
- (2) Ballot designs for elections for Federal office.
- (3) Methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites) and ensuring that registered voters appear on the voter registration list at the appropriate polling site.
- (5) Methods of ensuring the accessibility of voting, registration, polling places and voting equipment to all voters, including individuals with disabilities (including the blind and visually impaired), Native American or Alaska Native citizens, and voters with limited proficiency in the English language.
- (4) Methods of conducting provisional voting.

Recess: The meeting recessed for the evening at 4:46 PM.

Reconvening: Chair Lewis reconvened the meeting at 8:30 a.m. on Thursday, April 28, 2005.

Updates and Reports: Chair Lewis outlined the agenda for the day's proceedings. The first session would be a Q and A session with EAC commissioners. After that would be a report of the Executive Director Search Committee, which would be conducted with the Board of Advisors members only. At the conclusion of the committee report, the meeting will be reopened to the public for adoption of bylaws and election of officers. After that, the board can vote on any issues.

Chair Lewis outlined the voting procedures to elect officers and answered questions accordingly.

Chair Lewis then invited the Board to pose questions to the Commissioners. Thereafter, the Commissioners would ask questions of the Board.

A number of issues were discussed during the Q and A session. Mr. Harding indicated that members of the Access Board were at EAC's disposal to assist in developing a VVSG that could be digested by the general public. The Commissioners answered various questions regarding anecdotal statements being made about the November 2004 election; possible means to increase voter turnout; VVPAT and possible alternatives; possible scenarios for jurisdictions not in compliance with HAVA come January 2006; access to EAC website; the voting systems certification and laboratory accreditation processes; the high rate of turnover amongst volunteers at groups that do voter registration training; and obstacles facing state and local election officials.

Executive Director Search Committee Report: The Board then met in Closed Session for 20-30 minutes to receive a report from its Executive Director Search Committee.

Adoption of Bylaws: Chair Lewis stated that the meeting was reopened to the public and that they would move on to the business section of the meeting. According to Robert's Rules, the group would read the bylaws and consider them as individual sections. After adoption of the bylaws and review of the proxies, there would be elections of officers. He then invited Ms. Kaufman, Chair of the Bylaws Committee, to go through the first reading of the bylaws.

Ms. Kaufman reported that the Bylaws Committee consisted of Beverly Kaufman, Chair, Wendy Noreen, Sue Sautermeister, Ernie Hawkins, and Doug Lewis. The first draft of recommended bylaws was distributed to the Board via e-mail prior to the meeting and copies were distributed on April 27. The Committee members in attendance had a mini-meeting on the 27th and were joined by other board members (Mr. von Spakovsky, Secretary Kiffmeyer, Nelson, and Mr. Crangle) who submitted recommendations for amendment. After the discussion, their suggestions were accepted and distributed to the board.

Mr. von Spakovsky moved to dismiss the reading because everyone in attendance had the bylaws in front of them and the friendly amendments had been accepted by the committee. He also moved to accept the bylaws. Secretary Vigil-Giron seconded the motion.

Secretary Kiffmeyer agreed with the dispensing of the reading, but had a question about a proposed amendment. Chair Lewis asked if Mr. von Spakovsky would amend his motion to dispense with the reading first and Mr. von Spakovsky agreed; Secretary Nelson seconded. Chair Lewis agreed that they would proceed without reading the bylaws and would proceed to the consideration.

As to Article 1, hearing no objections, Chair Lewis asked that all in favor of adopting Article 1 say, “aye.” The Board voted to adopt Article 1.

Mr. Harding asked if Article 2 should cite the Federal Advisory Committee Act and Chair Lewis responded that he thought it was cited. Mr. Harding stated that the Article refers to the Act without a citation. Mr. Harding agreed with Chair Lewis that the Board could incorporate the citation by reference and attach them to future editions.

As to Article 2, hearing no objections, Chair Lewis asked that all in favor of adopting Article 2 say “aye.” The Board voted to adopt Article 2.

Chair Lewis stated that Article 3 came straight from the law, but contained an incorrect item. Item I should read, “two members appointed by the International Association of Clerks, Recorders, Elections Officials, and Treasurers.”

Mr. Hillman observed that he knew the language came from the law, but for the record, there is no such thing as the Office of Public Integrity in the Department of Justice. It is the Public Integrity Division of the Department of Justice. Chair Lewis asked that the correct information be sent to EAC.

As to Article 3, membership, hearing no objections, Chair Lewis asked that all in favor of adopting Article 3 say “aye”. The Board voted to adopt Article 3.

As to Article 4, terms of service and filling of vacancies, Chair Lewis asked that all in favor of adopting Article 4 say “aye”. The Board voted to adopt Article 4.

As to Article 5, officers, no one voiced an objection that the Board shall elect a Chair, Vice-Chair and Secretary; and the officers shall be elected by secret ballot, each position lasting for a period of one year, with no officer serving more than two consecutive terms in one office. Chair Lewis stated that he noticed while looking at the

bylaws that there was no indication of when elections or meetings would be held. Ms. Sautermeister explained that they only have to meet once a year and did not want to limit it to a certain meeting. Secretary Nelson suggested that it specify the required meeting as the first meeting each year. Mr. Thomas asked if the term of office would be affected with no meeting specified and Chair Lewis suggested that the term be one year or until the next election is held, to which Mr. Thomas agreed.

Secretary Vigil-Giron asked if the Parliamentarian is going to adopt rules of order or if the Board would adopt Robert's rules. Secretary Carnahan asked if the Committee suggested having party differences between the Chair and Vice Chair. Chair Lewis stated that he was hoping not to do that although he would consider it. There are some members of the group who cannot be identified with a particular political party and should not be ruled out because of that. Secretary Carnahan commented that EAC is separated by party and so are Secretaries of State. Chair Lewis indicated his understanding, but stated that some people in the group are not supposed to engage in partisan politics. Secretary Carnahan suggested that the Board categorize people as part of a party or independent or undeclared.

Ms. Kaufman stated that she agreed and that the Committee discussed the same issue but decided it would be better left to discussion. Mr. Dickson pointed out that the group had half an hour and asked that they deal with the issue expeditiously. Secretary Carnahan proposed an amendment to include a statement that the party filling a seat shall not fill the same seat two years in a row and that the Chair and Vice Chair should be from different parties. Chair Lewis suggested that one person being unaffiliated should not preclude their predecessor from also being unaffiliated. Secretary Vigil-Giron seconded. Chair Lewis asked if there was further discussion on the amendment that the Chair and Vice Chair be of different political parties. Mr. Hillman asked for guidance from the General Counsel and stated that he assumed that a Board of Advisors was an apolitical entity, so party identification might be unusual.

EAC Chair Hillman state that HAVA specifically says that appointment to the Board shall take into consideration party affiliation so there is a balance. Mr. von Spakovsky stated that in the year and a half that the Board has been operating, politics has not played a part in the Executive Committee and he did not wish to introduce politics now. There is a large mix of members on the Board, from all levels of government and Mr. von Spakovsky

stated that he does not want to know what political party each member affiliates with because it is unimportant to the Board's work.

Mr. Crangle stated that he thought most Americans look at party affiliation in terms of public image, and in that sense, it may be advisable to adopt the amendment. Mr. Hillman agreed with Mr. von Spakovsky about because he believes that identifying people with political parties suggests partisanship. Mr. Shortbull called the question and Chair Lewis asked for a vote on whether to adopt the procedure that the Chair and Vice Chair should be from different political parties. Nine were in favor and twelve were opposed, so the motion failed.

As to Article 5, added to the number 3 was "or until the next election." Added to number four was "for a specific office." And added as number 6 is "elections shall be held at the first meeting of each calendar year." Hearing no further comment, Chair Lewis asked that all in favor say "aye." The Board voted to adopt Article 5.

As to Article 6, duties of the officers, Chair Lewis asked all those in favor say "aye." The Board voted in favor of Article 6.

As to Article 7, meetings, Chair Lewis noted that the amendments notice went from 30 to 45 days and may be waived by a majority agreement of the members; meetings may be held by electronic means. EAC Chair Hillman asked that the number of meetings per calendar year be subject to the availability of funds. Hearing no further objections, Chair Lewis asked that all in favor say "aye." The Board voted to adopt Article 7.

EAC Chair Hillman asked about the waiver in Article 7. EAC is required to post a notice of all meetings in the Federal Register and wanted to be sure that they still provided for notice in the Federal Register. Ms. Noren suggested adding, "but not less than 14 days prior to" and Mr. von Spakovsky suggested to the extent permitted by law. It was his amendment and he intended that if there were an emergency, the group could waive the period. Chair Lewis agreed to change the language to "as permitted by law" and amended since it was already adopted.

As to Article 8, quorum and proxy voting, Chair Lewis suggested that proxies be given up to the day of the session. Mr. Crangle moved on the motion and Mr. Shortbull seconded. Thereafter, the Board voted to amend to subparagraph 2 of Article 8 to include the

words “up to the day of the meeting.” The board voted to adopt Article 8.

As to Article 9, standing committees, Secretary Kiffmeyer suggested that E and F use parallel language since they require separate members from NASED and NASS. Secretary Vigil-Giron seconded the motion and Ms. Kaufman stated that she did not want to dilute the representation of IACREOT or NACRC as a result. Secretary Vigil-Giron stated that the goal was to represent different perspectives. Ms. Sautermeister asked if the motion only pertained to Voting Systems Standards Committee, to which Chair Lewis responded in the affirmative. He also noted that he would be objecting to it because it did not include a representative from the Elections Center. He suggested the addition of an H and an I and that the Election Center be represented. Secretary Kiffmeyer asked Chair Lewis if he was suggesting an amendment to the amendment proposed and he responded yes.

Mr. Nelson stated that his original intention in the language was to make sure that there was at least one person representing the state level organization, not to include someone from every organization. Ms. Herrera stated that it was important to separate Secretaries of State and State Election Directors since they certify and qualify machines. Chair Lewis suggested that they say one member from NACRC, IACREOT, the Election Center, NASS, and NASED be part of it, eliminating E through G, and the Committee would be 11 members instead of nine. The two added members would be the Election Center and dividing NASS and NASED.

Mr. Dickson asked if the Board was properly balancing interest groups in terms of groups that represent citizens and Chair Lewis responded that there would be five from the groups they just talked about and one from disabilities. Chair Lewis asked if they should add more groups from non-elections organizations. Mr. Kliner stated that if they expanded the groups, some of the people that would like to serve but are not affiliated could participate. Chair Lewis asked Secretary Nelson if it would be possible to say that the Chair can select members who are not part of the organizations and Secretary Nelson responded that he could have three at-large appointments from the board. Chair Lewis suggested that the Chair of the Board of Advisors select from people who are not already representative of the five organizations mentioned. Ms. Kaufman suggested restating the language to read each of the five organizations mentioned could have only one representative on the Committee.

Secretary Vigil-Giron asked if the group needed to correct the IACREOT name, and Chair Lewis pointed out that it did need to be corrected throughout. Mr. Dickson requested that the language be specific as to the pool from which the Chair could select members since he hoped the document would be around for many years.

The Board voted in favor of amending E to read, “One member, excluding the Chair, shall represent each of the following organizations.”

Mr. Dickson moved to create subsection F, which would allow the Chair to select members who are not members specified in section E. Thereafter, the Board voted in favor of this amendment.

As to Article 9, hearing no objection, Chair Lewis asked that all in favor say “aye.” The Board voted in favor of Article 9.

As to Article 10, amendments, Chair Lewis noted that the bylaws could be amended not less than 30 days prior to an annual meeting. Mr. Dickson asked if the bylaws can only be amended at something designated as an annual meeting. Secretary Kiffmeyer suggested not using the annual meeting language since they struck it in an earlier adoption. Chair Lewis suggested eliminating the word annual, which would include electronic meetings as well. Ms. Kaufman asked if they would still need a two-thirds vote to adopt bylaws and Secretary Nelson responded that two-thirds was correct.

As to Article 10, as amended, Chair Lewis asked that all in favor say “aye.” The Board voted in favor of Article 10, as amended.

Proxy Voting:

EAC Chair Hillman expressed her hope that the availability of a proxy vote would not encourage people not to attend in person. Of the 37 members of the board eight are not very responsive and EAC is doing their best to work on them, but that does mean that 29 members are active and EAC Chair Hillman hopes to see a majority at every meeting.

Mr. Dickson suggested that the bylaws committee should decide on whether or not to limit the number of proxies. Chair Lewis stated that the issue would be assigned to the bylaws committee for recommendations at the next meeting. Secretary Kiffmeyer suggested that the bylaws reconcile the timing for getting proposing bylaw changes and getting information out to members

so that the Chair has a reasonable ability to get proposals and pass them on without it having to happen on the same day. Chair Lewis stated that ordinarily the proxies would be submitted to a Proxy committee to verify them as legitimate, but he suggested doing a quick adoption. There were proxies from David Orr, Wendy Noren, James Elekes, Ernie Hawkins, Jim Carnes, and Secretary Kiffmeyer. Chair Lewis responded to a question by indicating that the proxy would vote for those not present.

Mr. Crangle asked how people could vote by proxy before the adoption of the bylaws and Chair Lewis responded that he told everyone in advance that there would be proxies assuming the adoption of the bylaws. The Board voted to accept the proxies as submitted for this meeting.

Chair Lewis stated that Mr. Harding, Ms. Purcell, Ms. Kaufman, Director Brunelli, and the Chair would vote for themselves and their proxies. Chair Lewis counted 19 present and 6 proxies, with one non-voting member present. He got agreement that a majority would be 13 and passed around the ballots.

Election of Officers: Chair Lewis asked for nominations for Chair. Secretary Vigil-Giron nominated Mr. Crangle. Ms. Purcell nominated Ms. Kaufman. Each candidate made brief presentations about their interests in serving as Chair of the EAC Board of Advisors.

Votes were cast, Chair Lewis counted the votes and found that Ms. Kaufman received a majority of the votes with 18. Mr. Crangle moved to have the vote cast unanimously, Mr. Hillman seconded the motion and the Board voted in favor of the motion. Mr. Lewis congratulated Ms. Kaufman, who immediately assumed responsibilities as chair of the Board.

Chair Kaufman recognized Mr. Sirvello, who nominated Mr. von Spakovsky for the position of Vice-Chair. Secretary Vigil-Giron nominated Mr. Thomas. Mr. Shortbull stated that he was uneasy about having a member from the Department of Justice as an officer of Board.

The votes were cast and the ballots were counted with Mr. Thomas winning a majority with 14 votes.

Chair Kaufman asked for nominations for the office of Secretary. Mr. Shortbull nominated Secretary Vigil-Giron, who declined because of her duties as NASS President, but nominated Mr. Sirvello. Former Chair Lewis moved for nominations to cease,

which Ms. Herrera seconded. The Board voted in favor of the motion. Thereafter, The Board voted in favor of Mr. Sirvello as Secretary.

Items for Action: Chair Kaufman thanked Mr. Lewis for his invaluable services as the Board's first chair. She stated that she has some huge shoes to fill and is grateful for the opportunity.

Mr. Dickson moved to have the Advisory Board urge EAC to engage experts to help with ballot design. The motion was seconded.

Mr. Harding asked what Mr. Dickson's intent was in suggesting the motion. Mr. Dickson stated that he wanted to get at the hard science of ballot design. Secretary Nelson asked if it was appropriate to direct the Commission to work with a particular organization. Chair Kaufman suggested that Mr. Dickson change the wording of his motion to soften the directive. Mr. Dickson agreed to insert "such as" so that other groups could be considered.

Chair Kaufman restated the motion moved that the Board urge EAC to engage experts to help with guidance on ballot design. Specifically, she moved that they reach out to those in low literacy, such as Democracy Design and simplified language. The Board voted in favor of the motion.

Ms. Purcell requested that suggestions on the VVSG from the Board members be e-mailed to Ms. Purcell or Mr. Harding.

Mr. Shortbull moved that the Executive Director report to be moved to EAC, which was seconded by Mr. Harding. The Board voted in favor of the motion.

Mr. Thomas moved to adjourn. The motion was seconded by Secretary Vigil-Giron.

Adjournment: The meeting was adjourned at 12:41 P.M.