

**Minutes of the Public Meeting
of the United States Election Assistance Commission
April 20, 2006**

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on April 20, 2006, at Hilton Seattle Hotel, Windward Room, 1301 6th Avenue, Seattle, Washington 98101. The public meeting convened at 10:00 a.m. and ended at 1:30 p.m.

PUBLIC MEETING

Call to Order:

Chairman Paul DeGregorio called the meeting to order at 10:00 a.m.

Pledge of Allegiance:

Chairman DeGregorio 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: Chairman Paul DeGregorio, Vice-Chairman Ray Martinez III, Commissioner Donetta Davidson, and Commissioner Gracia Hillman.

Senior Staff

Executive Director Tom Wilkey and General Counsel Juliet Hodgkins.

Presenters

Sam Reed, Secretary of State, WA; Rosanna Bencoach, Manager, Policy Division, State Board of Elections, VA; Jill LaVine, Registrar of Voters, Sacramento, CA; Thad Hall, Assistant Professor, Department of Political Science, University of Utah; and Doug Chapin, Director, Electionline.org.

Adoption of the Agenda:

Chairman DeGregorio asked for a motion to adopt the agenda. Commissioner Hillman moved to approve the agenda. The motion was seconded.

Motion carried unanimously.

Adoption of Minutes:

Chairman asked for a motion to adopt the minutes of the previous meeting. Commissioner Hillman moved that the minutes of the meeting of March 14th be approved. The motion was seconded.

Motion carried unanimously.

Reports:

None

Presentations:

Vote Counting and Recounting: Perspectives from the States

Presenter: Sam Reed, Secretary of State, WA

Secretary Reed discussed the 2004 Governor's election in Washington State where 133 (.00046%) votes separated the top two candidates out of 2.9 million ballots cast. Secretary Reed shared lessons learned through that recount experience. He stated that statutes, rules and voting standards need to be clear at the local and state levels. They must be in place prior to the election and cannot change during an election. In addition, the standards must be inclusive to anticipate foreseeable events.

A solid working relationship must be in place prior to the election. There should be a candid relationship of trust, confidence, and support, the Secretary of State and local officials, political parties, media and the public. A strong communications program is critical; transparency is vital. There should be an understanding of the roles of the state and local election officials.

Secretary Reed continued by stating the need for uniform and consistent standards for processes such as signature verification and pre-inspection of ballots because signature determines whether a vote will be processed. Review programs are critical for maintaining execution of state standards. It is essential to review county compliance with state standards during an actual election.

Washington's recount experience confirms voting system reliability. The voting machines consistently counted votes accurately, mistakes were attributable to humans. Planning, training, and oversight are key to avoid mistakes due to human performance.

In addition, adequate funding for election programs is essential to provide review, oversight and training. Voter education is critical for the increase in accuracy and reliability of elections, in helping voters properly mark ballots, and in promoting turnout and civic responsibility.

Secretary Reed concluded by expressing that good elections are everyone's responsibility. Reconciliation and accountability is the highest priority. There must be adequate funding for election programs. In addition, strong communications and central authority is critical. State and local election administration cannot eliminate risks, but can reduce risk through best management practices, oversight and redundancy.

Presenter: Rosanna Bencoach, Manager, Policy Division, State Board of Elections, VA

Ms. Bencoach discussed Virginia's history of vote counting and recounting. In 1989, there was a statewide recount of the Governor's election where the difference in votes was less than 7,000 out of 1.79 million (0.36%). The numbers changed slightly in the recount, but the outcome did not change. In the 2005 election for Virginia Attorney General, the certified results showed a difference of 323 votes out of 1.94 million cast (0.016%). In Virginia, recounts are conducted under the direction of a three-judge court. Only a candidate who has lost by no more than 1% can request a recount. If the margin is one-half of a percent or less, then the State agencies involved, and the respective localities have to pay their own costs in conducting the recount. If the difference is over half-a-percent, the candidate must post a bond of \$10 per precinct and will later be assessed for the government's actual costs.

After the 2000 presidential election, the Virginia State Board of Elections (SBE) initiated an ad hoc study of the State's recount laws, drawing on the experience of a bi-partisan group of election officials, party staff/officials and attorneys, all of whom had worked in previous Virginia recounts. The SBE's recount standards provided administrative details and key code provisions on the counting of ballots as a convenient reference for judges and others who may not deal with these laws on a regular basis.

The SBE standards directed that ballots ruled invalid in the election should not be counted in a recount. In addition, matters of voter eligibility were not appropriate for a recount, only a contest. These SBE standards also included instructions on how to count paper ballots, and ballot examples illustrating each variation to be used when ballots are counted by hand.

In 2002, the Virginia General Assembly clarified the recount laws based on the SBE's conclusions, and limited the re-running of marksense and punch card ballots. The 2005 recount presented the first major test of

these various law changes. With the exception of Freedom of Information requests filed by only one candidate, information was provided simultaneously to both candidates. Virginia worked to keep the process open and transparent, and keep the staff accessible.

In the course of the 2005 recount, officials discovered that not all marksense machines then used could be reprogrammed to separate out the overvotes and undervotes for a single office. This equipment had been certified before the recount law was changed. The law now requires ballots to be hand-counted in a recount if the tabulator cannot be reprogrammed to meet this requirement.

The recount uncovered other issues as well. One locality accidentally used the wrong pens for some polling places, resulting in over 200 uncounted ballots. In another locality, the problem of "unprocessed" ballots was raised; SBE will address this issue, requiring unprocessed ballots to be rejected (as overvotes already are) so the voter can complete a new ballot if voting in person.

The variety of voting equipment in use complicates recounts. SBE certifies the equipment, but the 134 localities then pick from that list. Except for HAVA funding, voting equipment is purchased with local dollars. With a combination of old equipment, replacement equipment, and DREs added for accessibility in precincts with another main system, staff was hard pressed to write the instructions for every piece of equipment and combination.

The mistakes identified in the process of the recount were human error, including numbers transposed or entered in the wrong boxes and not following instructions properly. As an example, one valid absentee ballot was sealed and sent to the Clerk's office by weary officials on election night before it was counted.

Presenter: Jill LaVine, Registrar of Voters, Sacramento, CA

Ms. LaVine discussed Sacramento County's history with recounting. She began by explaining California's history with voting systems. Sacramento County used a punch card voting system for over 34 years. In 2001, in California, punch cards were decertified by the Secretary of State Bill Jones.

California Secretary of State Kevin Shelly established a Task Force on paper audit trails. Also, voting equipment vendors did a pilot project on early voting using the Vote Trakker system provided by International Technology, Inc., at no cost. The project was authorized by the Voting Systems and Procedure Panel within the Office of the California Secretary

of State and the further authorization was provided by the Sacramento County Board of Supervisors. This was the first voter verified paper audit trail (VVPAT) in the nation.

The pilot project involved early voting in six locations for a period of eleven days prior to the November 5, 2002 Election where 1,612 ballots were cast. Voters from anywhere in Sacramento County were permitted to vote at any of the six locations. There were a total of 246 variations of the ballot for this election. The voting units were accessible to blind voters and voters with disabilities and each voter was able to choose to have his or her ballot presented in either English or Spanish

This early voting VVPAT pilot was conducted under very controlled conditions. Each of the early voting sites was staffed with experienced personnel and each of the equipment and system met California requirements and expectations. As part of the canvass of the vote, one of the early voting polling places, where 114 ballots were cast, was manually recounted.

The variety of ballot types made the recount complicated. It took 127.5 hours to recount the 114 ballots, or approximately an hour and 15 minutes for each ballot. The number of votes from the machine count and the number of votes from the paper ballots matched exactly.

Questions and Answers:

In response to questions by EAC Commissioners:

Secretary Reed reported that EAC and NASS need to stress the importance of a good relationship between State and local election officials. A good relationship and training election officials and staff on standards and procedures is fundamental to a successful election.

Ms. Bencoach reported that it is helpful to have procedures in place before a recount incident occurs. Virginia does not review ballots before they are put through the machine. This is done to maintain the integrity of the voter's original cast ballot.

Ms. LaVine reported Sacramento County did not choose the system with VVPAT. They chose an optical scan unit system.

Recess

Vote Counting and Recounting: Research

Presenter: Thad Hall, Assistant Professor, Department of Political Science, University of Utah

Dr. Hall reported his observations of the vote counting process starting with the printing of ballots and the securing of voting machines before an election and ending with the auditing of the election.

States vary in the type of pre-election processes they utilize. Almost all states use procedures for testing tabulation equipment before the election. These tests vary in the level of detail but generally involve casting a pre-audited set of votes on a machine and comparing the tabulation results with the known results. However, beyond the tabulation testing process, there is little consistency in the pre-election processes.

There are variations in the way absentee ballots and in person early voting are treated across states. In addition, there are varying rules regarding the clarity of how ballots and voting machines are to be handled at the close of each day of voting.

Most states have very clear rules about how ballots and voting equipment are to be treated in precincts. However, there are variations in counting ballots, most starkly regarding in-precinct vote reconciliation. In at least 17 states, there are no provisions for reconciling the ballots counted in the precinct against the number of voters who cast ballots. This means that there is no way to determine that the number of voters who cast ballots and the number of ballots counted are equivalent. Even in states with such rules, the rules are not equitable across voting system platforms. Moreover, this problem is not addressed in the canvass process; more than 40 states have no requirement that the canvass process reconcile the number of voters voting and the number of ballots cast.

One of the hallmarks of free elections is that the election is transparent to the public. I measured transparency in three aspects of the election. First, examined if there were provisions for observing pre-election machine testing. Second, examined who can observe voting in precincts. Third, considered who can observe vote tabulation. In localities where votes are tabulated in-precinct, these last two items obviously are conflated.

There is a strong bifurcation between states that allow the public to observe each of these components of the voting process and states that only allow representatives of candidates or political parties to observe. In some states, observers are explicitly not allowed to observe voting, machine preparations or vote counts. Instead, a very limited number of registered and credentialed challengers are allowed in polling places, not

to observe but to challenge voters' credentials. Often, there is not even an exception for the media to observe the election.

Presenter: Doug Chapin, Director, Electionline.org

Mr. Chapin commented that recounts and contests and, post election litigation are classified by three interests. The first is the individual, the "vox populi" (the voice of the people). The second is societal, the need to pick winners, a results-oriented interest. The third is a balance of the first two consent of the governed interest showing that the election was fair.

A recount is a retabulation of the totals prior to the final vote count; either by hand or using the same method as when originally counted. It has two purposes: (1) determine who won, and (2) evaluate the process. It is an opportunity for election officials, voters, and interested citizens to assess how the system worked, take lessons from that, and move forward.

A recount is triggered in a close election either automatically or by request, depending on the state. States differ concerning who can request a recount; some limit it to losing candidates, while others allow political parties, registered voters or an actual voter to request a recount. Often the requestor has to pay for the recount. States also vary concerning who does the recount (or its equivalent) arena and who can observe the recount. On occasion, there is a different winner on election day than on certification day.

Contests are similar to recounts. The first difference between the two is outcome related. There is an allegation of error, misfeasance or malfeasance, or other deliberate error. The second is process related where there are challenges to individual voters in an effort to assess the overall health of the election system. The third is the vox populi where individual voters voice their own doubts about the process.

Both recounts and contests have a tension between fairness and certainty. Fairness is an effort to reach out to individual interests to assure the voter that his or her vote was counted, or his or her voice was heard. Certainty is the need to know who won in a time sensitive manner.

There are some "dangers" to a recount. First, a candidate might get the sore loser label. Second, election officials have the danger of a controversial, time intensive and cost intensive process. Finally, Society faces a loss of voter confidence and assumes that recounts are just politics by another name.

There are a wide range of deadlines and procedures that cause friction between Federal, state and local requirements. The study with Thad Hall

and Mike Alvarez of CALPAC and Kim Brace of Election Data Services incorporates going through State election codes for the most important processes. They are also looking at the transparency of the process and the accountability for election officials.

The elections process needs to be more adaptable to incorporate what we can learn from the recounts. The current partisan environment is blurring the lines between recount and contest.

Questions and Answers:

In response to questions by EAC Commissioners and the EAC Executive Director:

Mr. Hall recommended that states develop good accounting procedures for their ballots and inform the public of the recount procedure, so when there is a recount they can account for what they are actually recounting. In addition, localities should think through and be able to show a chain of custody for their voting technologies.

Mr. Hall reported that election officials should make better use of the audit tapes from the voting machines. But, states treat the audit trail with varying levels of importance. One suggestion is to designate one pollworker as greeter to educate voters at polling places. This can help reduce the number of provisional ballots cast.

Mr. Chapin recommended that election officials think backwards from certification. In order to educate voters, officials should not look towards the mainstream TV and print media but towards advocacy groups and using the web. Election officials are probably the most educated to conduct a recount, but they are not always the ones to conduct it. In some cases it is done by judges and law clerks that have never seen an election law case. Consequently, the information regarding recount procedures should be given to the judges who adjudicate recount cases in the courts.

Adjournment:

Chairman DeGregorio adjourned the meeting at 1:30p.m.