

Minutes of the Public Meeting United States Election Assistance Commission

1225 New York Avenue, NW
Suite 150
Washington, DC 20005

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Wednesday, April 30, 2008. The meeting convened at 10:03 a.m., EDT. The meeting was adjourned at 12:42 p.m., EDT.

PUBLIC MEETING

Call to Order:

Chair Rosemary Rodriguez called the meeting to order at 10:03 a.m. and was pleased to note that this was the second Commission meeting that was being Web cast.

Pledge of Allegiance:

Chair Rodriguez 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: Chair Rosemary Rodriguez, Vice-Chair Caroline Hunter, Commissioner Donetta Davidson, and Commissioner Gracia Hillman. Four members were present for a quorum.

Senior Staff:

Executive Director Tom Wilkey, Deputy General Counsel Gavin Gilmour and General Counsel Juliet Hodgkins.

Presenters:

Edgardo Cortes, Acting Division Director, HAVA Payments and Grants, and Election Administration Improvement Programs U.S. Election Assistance Commission; Pamela Bormann, Audit Manager, Iowa Office of the Auditor of State; Ted Trimpa,

Brownstein Hyatt Farber Schreck, LLP; Charles Krogmeier,
Director, Iowa Department of Management

Adoption of the Agenda

Chair Rodriguez asked for a motion to adopt the agenda.
Commissioner Donetta Davidson moved to adopt the agenda.
Commissioner Hillman seconded the motion. The motion carried
unanimously.

Welcoming remarks

Chair Rodriguez extended her thanks to the Commissioners for
accommodating the request to hold a special meeting, noting that it
may be necessary to hold additional special meetings from time to
time due to the volume of work that the Commission has to
accomplish.

Old Business

Vote to Modify Advisory Opinion 07-003-A Regarding Maintenance of Effort, Pursuant to HAVA Section 254(a)(7)

Commissioner Hillman made a motion to remove from the table
Vice-Chair Hunter's proposal that would modify Advisory Opinion
07-003-A regarding Maintenance of Effort, Pursuant to HAVA
Section 254(a)(7). The proposal was presented at the April 16,
2008, meeting in Minneapolis and was tabled in order to allow the
public additional time to submit comments.

Vice-Chair Hunter reported that since the April meeting additional
public comments were received regarding her proposal, noting that
to date there are approximately 12 comments in favor of the
proposal and the previous night a comment signed by
approximately ten organizations opposing the proposal was
received via email.

Vice-Chair Hunter reiterated her reason for presenting this proposal
is based on the fact that the applicable section of HAVA is
unambiguous and does not make requirements of local and county
governments regarding Maintenance of Effort. In addition, EAC
does not have the authority to make such a request of local and
county governments, because Congress limited the language in the
statute to only make a demand on the State. Sections 254(a)(2)
and Section 254(a)(8) both include mention of "units of local
government" to differentiate from the State. Had Congress

intended those units of local government to maintain expenditure, it would have included the appropriate language in 254(a)(7). Any other interpretation would require the Commission to overreach its statutory authority.

Commissioner Hillman pointed out that not only does the EAC have a significant responsibility both as a Federal agency to Congress and to the voters to be able to document that States are in compliance with all aspects of HAVA, but in addition it is her strong belief that Congress did not intend that only the State expenditure is what is considered Maintenance of Effort when in some States 70 percent or more of the HAVA dollars went to States, or in other cases the local units of government paid the cost for administering the Federal election and before HAVA they paid that cost without dollar support from the State.

Commissioner Davidson noted one of her concerns is whether the information that the Commission currently has drills down deep enough to know how many of the States are dealing MOE the way that the Commission is considering the matter.

Chair Rodriguez expressed her appreciation to Vice-Chair Hunter for agreeing to defer taking further action on her policy in order to give the Commission additional time to explore the issue based upon Congressman Gonzales' recommendation that the Commission not act in haste, in addition to consider the comment signed by the approximately ten organizations opposing the proposal. Chair Rodriguez suggested that the Commission entertain the possibility of holding a public hearing on this topic if at all possible at its May 22, 2008, meeting in order to allow election officials an opportunity to weigh in more fully.

Vice-Chair Hunter made a motion to table the proposal to amend Advisory 07-003-A until such time that the EAC Commission is able to vote on the proposal again. Commissioner Davidson seconded the motion. Commissioner Hillman and Vice Chair Hunter voted in opposition. The motion failed on a vote of 2 in favor and 2 opposed.

Vice-Chair Hunter made a motion that the EAC refrain from enforcing EAC Advisory 07-003-A to the extent that it requires a State to include local and/or county government expenditures when determining the MOE baseline requirement outlined in HAVA Section 254(a)(7) until such time that the Commission is able to vote on the amended policy regarding the MOE requirements of HAVA. Commissioner Davidson seconded the motion. Counsel

Hodgkins advised Vice-Chair Hunter that the original motion she had made in Minneapolis continues. Vice-Chair Hunter agreed to withdraw her motion.

New Business

Briefing Regarding State Plans

Edgardo Cortes, Acting Division Director, HAVA Payments and Grants, Election Administration Improvement Programs, U.S. EAC, presented the Commission with a briefing on the steps that EAC will be utilizing with respect to its review of State plans. The briefing included what the current role of the EAC is regarding its review of State plans, the preparation of a proposed definition for “material change in the administration of the plan” by EAC staff for consideration by the Commissioners, internal procedures that EAC will utilize for processing State plans and the process that EAC staff will continue to utilize to process State plans until new procedures are established.

Mr. Cortes noted that a draft proposal defining what a “material change” to a State plan is will be forthcoming in the next one to two weeks, which he anticipates will answer many questions previously raised on the part of the States.

Mr. Cortes suggested that the Commission consider entertaining a 30-day public comment period in order to allow States and other interested parties an opportunity to weigh in on this issue more fully.

Request to Amend State Instructions on NVRA Form – Michigan

Mr. Cortes presented the Commission with a request from the State of Michigan to amend the instructions on its NVRA form. Mr. Cortes explained that Michigan would like to remove its current mailing address, which is the Chief State Election Director, and instead list 83 counties and 26 most populous cities, a total of 109 addresses, on the Federal form. Mr. Cortes advised the Commission that his division cannot approve this request at the present time because the change makes the form less user friendly and less accessible, would increase both the length and printing cost of the form, would create confusion as to which jurisdiction a voter falls under, would create significant administration burdens for EAC and chief State election officials, and would give the indication to other States that this is an acceptable change to the form.

A proposed recommendation/accommodation will be presented to Michigan that its form instead read, "You may also return completed applications to the county, city or township clerk where you normally reside." Voters will be notified that a complete list is available on the Web site." A final recommendation will be brought before the Commission at its May meeting.

Commissioner Hillman expressed her concurrence with Mr. Cortes' proposed recommendation, noting that it appears to be a good fix to Michigan's request.

Iowa Audit Findings Appeal

Presenter: Pamela Bormann, Audit Manager, Iowa Office of the Auditor of State

Ms. Bormann presented testimony concerning the findings from the single audit report that was conducted by the Iowa Office of the Auditor of State for the period ending June 30, 2006, with regard to Iowa Secretary of State's questionable use of HAVA funds totaling \$61,238 related Iowa's celebration of voting heritage and voting rights.

Ms. Bormann pointed out that the findings in the appeal were based on a review of various Web sites regarding the events, consideration to FAQs on EAC's Web site and discussions with Mr. Cortes.

Presenter: Edgardo Cortes, Acting Division Director, HAVA Payments and Grants, and Election Administration Improvement Programs U.S. Election Assistance Commission

Mr. Cortes presented testimony concerning EAC's management decision regarding the findings of a single audit report for the period ending June 30, 2006, issued by the Iowa Office of the Auditor of State pertaining to the Secretary of State's use of HAVA funds for costs of a celebration of voting heritage and voting rights in Iowa.

Mr. Cortes also presented testimony concerning the financial status reports submitted by the Iowa Office of Secretary of State for years 2005 and 2006 and identified costs of \$250,391 that were described as "Celebrate Voting" and "Voting Rights Act 40th Anniversary." Of the \$250,391, HAVA Section 251 funds comprise \$106,665. Without a certification as required by Section 251(b)(2), EAC believes these costs are also questionable in terms of voter education or voter outreach. Once a determination has been made

by the Commission regarding which costs are eligible for financing with HAVA Section 101 or 251 funds, it is recommended that the EAC's Office of Inspector General perform an audit of all of these costs to determine what is or is not allowable.

Mr. Cortes noted that EAC's resolution of the single audit finding pertaining to "Celebrate Voting" is consistent with a similar audit findings presented in the Office of Inspector General reviews of the administration of HAVA funds by the States of New Jersey and Illinois.

Questions and Answers:

In response to questions by the EAC Commissioners:

Mr. Cortes pointed out because this is the first hearing the Commission has dealt with concerning an audit appeal, as opposed to through a tally vote, a written opinion that's voted on at a later date would allow the Commission to speak with one voice and clearly articulate its reasons for either upholding the management decision or overruling it and accepting the appeal.

Ms. Bormann noted that this was the first single audit report that was conducted for this program for the Iowa Secretary of State's Office for HAVA funds and that the activities in question occurred during fiscal year '05 and were paid for in fiscal year '06. Ms. Bormann responded that the statement contained in her written testimony that HAVA funds may not be used to "get out the vote" or to encourage voting was based on a FAQ she gathered from EAC's Web site.

The Commission recessed at 11:25 a.m. and returned to public session at 11:38 a.m.

Questions and Answers (Cont'd):

In response to questions by the EAC Commissioners:

Mr. Cortes reported he was unable to resolve whether the monies expended by Iowa were 251 or 101 funds and he would continue to research this in order to provide the Commission with a definitive answer. Mr. Cortes noted that according to Iowa's final report that was filed December 31, 2006, they no longer had any 101 funds available. Mr. Cortes further reported that although an audit has not been scheduled to date Iowa is on the list to be audited, and

if a request was made for that to be conducted the Inspector General pointed out that he could probably get the auditors on the ground within three weeks of the request.

Iowa Audit Findings Appeal (Cont'd)

Chair Rodriguez introduced and provided background information regarding the following remaining panelists.

Presenter: Ted Trimpa, Brownstein Hyatt Farber Schreck, LLP

Mr. Trimpa presented testimony in support of the appeal by the Iowa Secretary of State's Office concerning the single audit report that was conducted regarding its use of HAVA funds in connection with forums/events in conjunction with the project "Celebrate Voting" that began in August 2005 and ended in January 2006.

Mr. Trimpa provided the Commission with various pieces of documentation in addition to his prepared testimony that he requested be made part of the record pertaining to "Celebrate Voting: What HAVA means to Voters," "Building Communities. Celebrate Voting, An Academic Symposium" along with a Plan of Action.

Presenter: Charles Krogmeier, Director, Iowa Department of Management

Mr. Krogmeier provided additional details surrounding both the impetus behind and activities that comprised the "Celebrate Voting" event, which included participation by Simon Estes and Professor Nikki Giovanni in addition to the recognition/awards that were presented during a two-hour program on August 5, 2005.

Deputy General Counsel Gavin Gilmour reviewed the timeline that will be utilized for the submission and review of additional information by the State of Iowa by EAC regarding its appeal. Mr. Gilmour also provided recommendations on the type of information/details that the Commission would need to conduct a further review of the appeal.

Vice-Chair Hunter made a motion to request for more information of the State of Iowa regarding this audit appeal and allow the State 30 days to respond to this request for information. Commissioner Hillman seconded the motion. The floor was open for discussion on the motion. The motion carried unanimously.

Commissioners' Closing Remarks

Commissioner Hillman presented the Commission with a written statement to be made part of the record that explains why she voted in opposition to the policy adopted at the April 16, 2008, meeting concerning how requests for advisory opinions would be issued on the use of HAVA funds. Commissioner Hillman pointed out that while she supports the goals of the policy her concerns centered around the fact that (1) there was an unnecessary rush to adopt the policy without full consideration; and (2) the policy invites local units of government to make requests directly of EAC for advisory opinions and thus being able to bypass the States, and it is the States that give the local units the HAVA funds. The second half of the statement sets forth why Commissioner Hillman reversed her position with respect to considering State-by-State requests for updates on the mail voter form.

Chair Rodriguez expressed her appreciation for Mr. Frank Chiodo's representation on behalf of the current Iowa Secretary of State's Office, and to once again thank the Commissioners for accommodating the special meeting request, noting that the next meeting would be held on May 22, 2008, in Washington.

Vice-Chair Hunter made a motion to adjourn the meeting. Commissioner Hillman seconded the motion. The motion carried unanimously.

Meeting was adjourned at 12:42 p.m.