

Minutes of the Public Meeting United States Election Assistance Commission

Hyatt Regency Denver at Colorado Convention Center
Mineral Hall
650 15th Street
Denver, CO 80202

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on Thursday, March 20, 2008. The meeting convened at 8:35 a.m., MST. The meeting was adjourned at 2:06 p.m., MST.

PUBLIC MEETING

Call to Order:

Chair Rosemary Rodriguez called the meeting to order at 8:35 a.m.

Pledge of Allegiance:

Colorado Secretary of State Michael Coffman 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 and General Counsel Juliet Hodgkins.

Presenters:

Denver Governor Bill Ritter, Jr.; Denver Mayor John Hickenlooper; Brian Hancock, Director of Voting System Testing and Certification, U.S. Election Assistance Commission; Laiza Otero, Election Research Specialist, U.S. Election Assistance Commission; Brittain Williams, Project Co-Manager; Karen Lynn-Dyson, Director, Research Division, U.S. Election Assistance Commission; Connie Schmidt, Project Co-Manager; Karin MacDonald, Managing Partner, Q2 Data & Research LLC; Dr. Bonnie Glaser, Associate, Q2 Data & Research LLC; Chris Reynolds, California Deputy Secretary of State for HAVA Activities; Pat Arp, Wyoming Deputy Secretary of

State; Christopher Thomas, Michigan Director of Elections;
Inspector General Chris Crider

Welcoming remarks

Governor Bill Ritter, Jr. was pleased to welcome the EAC to the City of Denver, after which he commented on the importance and the positive results that will be realized with regard to the adoption of EAC's proposed policy change that would enable states to use Help America Vote Act (HAVA) funds to replace voting systems previously purchased with HAVA dollars. Not only will a new system ensure that every vote counts but will also be a new system that voters can put their trust in.

Adoption of Agenda:

Chair Rodriguez asked for a motion to adopt the agenda. Commissioner Donetta Davidson moved to adopt the agenda. Vice-Chair Caroline Hunter seconded the motion. The motion carried unanimously.

Approval of Minutes:

Chair Rodriguez asked for a motion to adopt the minutes of the February 7, 2008 meeting. Commissioner Gracia Hillman moved to adopt the minutes. The motion was seconded by Vice-Chair Hunter. The motion carried unanimously.

Reports:

Executive Director:

Thomas Wilkey extended a welcome to everyone in attendance and for having the opportunity to hold the meeting in Denver.

Mr. Wilkey reported the following EAC activities since the February 7, 2008, meeting:

EAC Commissioners provided testimony before both the House Appropriations Subcommittee on Financial Services and General Government and the House Administration Subcommittee on Elections. The testimony is available on EAC's website.

The Inspector General (IG) has issued two reports about the EAC which found 29 specific areas that need improvement within its operations, which

EAC is currently addressing. EAC will be meeting monthly with the IG and will also be providing a written report to Congress, the IG and the public.

A report of EAC's fraud and intimidation project was issued. The report stated that there was no evidence to support allegations that changes were made to the report for improper reasons or political motivations. The report is available on EAC's website.

Beginning in May EAC's website will offer a Glossary of Election Terminology in five Asian languages. A Native American Language working group will be hosted by EAC during the month of June focusing on how to meet the needs of voters who use languages that are primarily oral and not written.

Information on how to apply for the \$115 million appropriated by Congress in requirements payments funds is available on EAC's website under "In the Spotlight."

The Voluntary Voting System Guidelines (VVSG) certification manual currently available for public comment and can be viewed on EAC's website. Deadline for comments is April 4th. The deadline for commenting on the Technical Guideline Development Committee's recommended guidelines for the VVSG has been extended to May 5th.

Upcoming roundtable discussions will be held on the following dates: March 27, 2008, at Galludet University in Washington, D.C. with usability/accessibility professionals; April 24th with advocacy organizations, April 25th with election officials, and May 5th an interdisciplinary discussion with representatives from all of the major stakeholders.

A letter to EAC-accredited laboratories regarding submission of test methods was issued March 4th. The National Institute of Standards and Technology, the entity responsible under HAVA for accrediting laboratories, received a letter on March 13th, 2008. All correspondence on the certification program is available on EAC's website.

EAC is now accepting grant applications for the HAVA college pollworker program. The deadline for the mock election programs is April 7, 2008.

EAC distributes a monthly newsletter to keep the public updated on activities, upcoming meetings, and other HAVA-related updates. In addition, EAC's website calendar has been upgraded to post events and program updates.

New Business – Presentations:

Election Management Guidelines Update:

Presenter: Brian Hancock, Director of Voting System Testing and Certification, U.S. Election Assistance Commission

Mr. Brian Hancock provided a brief overview with respect to the development of the election management guidelines along with the development of the Quick Start Management guidelines. Mr. Hancock emphasized that the project is a cooperative effort between the EAC, its contractors and state and local election officials. Mr. Hancock commented that not only is the quality of the work outstanding but that state and local election officials across the country are utilizing the products in the manner intended.

Presenter: Laiza Otero, Election Research Specialist, U.S. Election Assistance Commission

Ms. Otero reported that two Quick Start Management guides are scheduled to be released during March 2008, the first which relates to developing an audit trail and the second which pertains to uniformed and overseas voters. During the month of April 2008 a Quick Start guide on central count optical scan ballots will be released. In addition, the following guides are in the works: Provisional ballots, canvassing and certifying an election, conducting a recount, developing community and university partnerships, elderly and disabled voters in long-term care facilities and language accessibility. Three working groups were conducted during the month of February with respect to canvassing and certifying elections, conducting a recount and provisional ballots.

With respect to the election management guidelines, Ms. Otero was pleased to report that the following eight chapters have been drafted and will be provided to the Commission for comments: Absentee voting and vote by mail, acceptance testing, ballot building, contingency planning and change management, developing an audit trail, polling place and vote center management, pre-election and parallel testing, and uniformed and overseas testing.

Ms. Otero provided an overview of the chapters concerning absentee voting and vote by mail, developing an audit trail, contingency planning and change management, and polling place and vote center management.

Presenter: Brit Williams, Project Co-Manager

Dr. Brit Williams provided details with regard to the following remaining four chapters of the election management guidelines: Acceptance testing,

ballot building, pre-election and parallel testing and uniformed and overseas testing.

Dr. Williams expressed his appreciation to Ms. Otero for her work in arranging and coordinating all of the steps that are necessary in producing the guidelines.

Questions and Answers:

In response to questions by the EAC Commissioners:

Dr. Williams responded to whether a Trojan Horse virus has ever been found imbedded in a code within voting systems. Dr. Williams stated that a Trojan Horse type of virus could only be imbedded within the software code when the Vendor is developing the system. In addition there is a certification process at both the Federal and State level as well as acceptance testing which would lend to discovery of the virus. This process would also take place well in advance of any election or prior to election candidates being put forth on a ballot.

Mr. Hancock responded to what is being done to keep the public advised of the correlation/differences between the election management guidelines and the draft recommended Voluntary Voting System Guidelines (VVSG) as recommended by the Technical Guidelines Development Committee. Mr. Hancock stated that their website contains an extensive section dedicated to voting systems including the Laboratory Accreditation Manual, and their Testing and Certification Manual. Mr. Hancock stated they would review their website to ensure clarity of the material presented.

Ms. Otero responded to how EAC will address the requirement of Section 301 of HAVA which requires voting systems to provide the voter with the opportunity to change the ballot or correct any error before the ballot is cast and counted in light of the release of the Quick Start guide on central count optical scan ballots. Ms. Otero acknowledged the specific requirement and pointed out that there are various jurisdictions using the system. She also acknowledged the need for guidance or education on the differences between central count system and precinct count system.

Dr. Williams responded to whether the Quick Start guides will cover how to address residual votes and also whether the Quick Start guides will cover who is permitted to conduct logic and accuracy tests.

Mr. Hancock responded that the materials would be distributed to the states following the Commission's review, along with the various boards' review. The previous year the boards were given ten days to review the materials and the virtual meeting room was utilized.

The Commission recessed at 9:43 a.m. and returned to open session at 9:47 a.m.

Chair Rodriguez was pleased to acknowledge the presence of Denver resident Richard W. Soudriette, President Emeritus of the International Foundation for Election Systems (IFES).

Voter Hotline Survey:

Presenter: Karen Lynn-Dyson, Director, Research Division, U.S. Election Assistance Commission

Ms. Lynn-Dyson presented the Commission with the results of a 14-month national web-based survey of a government-sponsored voter hotline that was conducted by the Pollworker Institute. More than 1,400 state and local election offices responded to the survey consisting of 55 questions. Ms. Lynn-Dyson highlighted some of the findings, best practices and key components that were uncovered during the project. A recommendation was made that the Commission accept the draft report, pending its final editing to the Government Printing Office format, and that the report be formally adopted.

Presenter: Connie Schmidt, Project Co-Manager

Ms. Schmidt provided the Commission with details regarding what the focus of the survey was, key findings that were gleaned from the survey along with tips and successful practices that were provided by various individuals and alternatives to a voter hotline that were revealed through the survey.

Ms. Schmidt expressed her appreciation for the support she received from colleagues Jennifer Collins-Foley, President, Pollworker Institute, and Karen Berkley former Research Director, IFES, and for the assistance provided by Ms. Lynn-Dyson.

Questions and Answers:

In response to questions by the EAC Commissioners:

Ms. Lynn-Dyson responded to the number of states that have available Telecommunications device for the Deaf (TDD) lines and also whether the survey covered the costs of operating a voter hotline. Ms. Lynn-Dyson reiterated that the draft report would be formally edited to GPO standards and she would come before the Commission at its April meeting with the

recommendation that the finally developed, edited report be adopted, after which she suggested it be posted to EAC's website.

Chair Rodriguez asked for a motion to accept the report from the voter hotline survey. Vice-Chair Hunter made a motion to accept the report. Commissioner Davidson seconded the motion. The motion carried unanimously.

Uniformed and Overseas Citizens Absentee Voting Act (UOCAV) Voters' Study:

Presenter: Karen Lynn-Dyson, Director, Research Division, U.S. Election Assistance Commission

Ms. Lynn-Dyson presented the Commission with three reports generated by Q2 Data & Research LLC. The first report sets forth a series of case studies highlighting the experiences from the states of Florida, Montana, South Carolina and Illinois serving their UOCAVA voters. The second report sets forth results from an international survey of over 5,500 UOCAVA voters. The third report sets forth the results of a conference of state officials and others interested in UOCAVA voters that was held on September 23, 2007, in Washington, D.C.

Presenter: Karin MacDonald, Managing Partner, Q2 Data & Research LLC

Ms. MacDonald presented the Commission with details surrounding the findings that were derived from the case studies conducted in the four states, in addition to a list of recommendations and best practices that resulted from the case studies. Ms. MacDonald next provided details from the conference that was held in Washington, D.C. on September 23, 2007, and was attended by representatives from the Department of Defense Federal Voting Assistance Program, a non-profit group that serves civilian and uniformed UOCAVA voters, vendors and technology experts that are tackling issues involving the electronic transmission of election materials, and state and local election administrators with first-hand knowledge of the implementation of UOCAVA. The conference was also attended by representatives from various Congressional offices and the U.S. Department of Justice.

Presenter: Dr. Bonnie Glaser, Associate, Q2 Data & Research LLC

Dr. Glaser presented the Commission with the results that were gathered from the international survey of 5,769 UOCAVA voters. The goal of the survey was to examine the issues and challenges that these voters face in voting or trying to vote and also to assess their experiences with using electronic transmission methods available in these jurisdictions.

Ms. MacDonald expressed her appreciation to members of the Overseas Vote Foundation, Ms. Lynn-Dyson and EAC staff for their help and support during the project, in addition to the individuals from the four states that participated in the survey. Ms. MacDonald further expressed her appreciation to the EAC for placing their trust in Dr. Glaser and herself to conduct the study.

Chair Rodriguez acknowledged the presence of Denver Mayor John Hickenlooper and advised Ms. Lynn-Dyson that she would continue with the panel's presentation following the Mayor's welcoming remarks.

Welcoming Remarks:

Mayor John Hickenlooper was pleased to welcome the EAC to the City of Denver. Mayor Hickenlooper expressed his deep appreciation to the EAC for the work that it does and also provided details regarding the preparations with respect to Democratic National Convention that will be hosted by the City of Denver, in addition to specific activities leading up to both the August 12, 2008, primary election and November 4, 2008, Presidential election.

Chair Rodriguez returned to the question/answer portion of the UOCAVA voters' study.

UOCAVA Voters' Study: (Cont'd)

Questions and Answers:

In response to questions by the EAC Commissioners:

Ms. MacDonald reported she was advised by Secretary of State Coffman that legislation is in the process of being drafted with regard to recommendations from the September 23, 2007, UOCAVA conference in Washington, D.C.

Chair Rodriguez asked for a motion to accept the UOCAVA Voters' study, specifically the following three reports: Voting from Abroad: A survey of UOCAVA Voters, UOCAVA Voters and the Electronic Transmission of Voting Materials in Four States and Facilitating UOCAVA Voting Conference. Vice-Chair Hunter made a motion to accept the report. Commissioner Gracia Hillman seconded the motion. The motion carried unanimously.

Election Data Survey Update:

Presenter: Karen Lynn-Dyson, Director, Research Division, U.S. Election Assistance Commission

Ms. Lynn-Dyson reported on the progress of the \$10 million election data grant program that was established by Congress. The request for application has been sent to the Office of Management and Budget (OMB) for approval and it is anticipated that approval from OMB will be forthcoming no later than March 24th. Upon approval the request for application will appear in the Federal Register. It is anticipated that the application will be posted in the Federal Register on or about March 28th which will allow EAC to meet the Congressionally mandated March 30th deadline.

Regarding the election day survey, Ms. Lynn-Dyson pointed out that all of the necessary paperwork related to the Paperwork Reduction Act has been filed with OMB and the survey was published in the Federal Register. Following the 30-day public comment period, which will end May 19, 2008, all recommendations/considerations will be integrated into the survey. If the additional 30-day process can be waived, the final survey instrument will then be returned to OMB. It is anticipated that final approval for the actual election day survey that will be used will take place the first week in June, at the very latest the latter part of June. The survey is now available for viewing on EAC's website.

[The Commission recessed for lunch at 11:00 a.m. and reconvened at 11:40 a.m.]

Amendment to Agenda:

Commissioner Davidson made a motion to amend the agenda, moving the briefing by the National Association of State Election Directors (NASED) as the final agenda item and going forward with consideration of the change of policy. Commissioner Hillman seconded the motion. The motion carried unanimously.

Consideration of Policy Change Proposal RE: HAVA Funds:

Chair Rodriguez presented the Proposed Policy Clarification on the Allowable Uses of HAVA Funds Authorized Under Titles I and II that revises along with the Decision rendered by the Government Accountability Office (GAO) and issued on March 19, 2008. Chair Rodriguez expressed her thanks to the GAO for the expeditious manner in which it responded to the EAC's request.

Chair Rodriguez made a motion to accept the revised policy. Vice-Chair Hunter seconded the motion. The floor was open for discussion as to

Chair Rodriguez's motion. Vice-Chair Hunter provided details regarding a statement she released the previous day that sets forth her position on the revised policy. Vice-Chair Hunter further noted that within the statement she lays out a new policy on how the Commission might move forward in releasing advisory opinions on HAVA funding issues. The policy will be brought to a future meeting for a vote. Vice-Chair Hunter's statement is available on EAC's website.

Commissioner Gracia Hillman offered her support of the revised policy, suggesting that consideration be given to edit/amend some of the language contained in the policy in order to ensure that states are aware of the fact that they must handle funds responsibly and with reasonableness. Discussion ensued over what the current policy of the Commission is with regard to state plans. Counsel Hodgkins addressed how staff will be required to approve any future expenditure of HAVA funds on HAVA-compliant voting systems with the adoption of the proposed policy.

Chair Rodriguez invited Inspector General Chris Crider to address the Commission. Mr. Crider emphasized that under the Inspector General Act he works differently and separately from the EAC. Mr. Crider pointed out his concern with the policy as it is currently drafted, that a reasonableness criteria is required and concurred with Commissioner Hillman's suggestion that some the policy needs to be amended in order to give EAC more discretion as to the use of HAVA funds for HAVA-compliant voting systems.

The Commission thereafter discussed Commissioner Hillman's suggested edits to various portions of the language contained in the proposed policy. Chair Rodriguez stated that she would accept all of Commissioner Hillman's suggested changes to the proposed policy. Counsel Hodgkins clarified the motion would be to approve the proposed policy with the amendments offered by Commissioner Hillman and accepted by the mover, Chair Rodriguez.

Chair Rodriguez requested a roll of the matter.

Chair Rodriguez – Yes
Vice-Chair Hunter – Yes
Commissioner Davidson – Yes
Commissioner Hillman – Yes

The motion carried unanimously.

Consideration on Changes to the State-Specific Instructions on the NVRA:

Commissioner Hillman presented the Commission with two memorandums, the first dated November 15, 2007, and the second dated March 19, 2008, from Edgardo Cortes, Acting Director, Election Administration Support Division, regarding pending state requests to change the instructions of the National Mail Voter Registration Form. Commissioner Hillman recommended that the Commission move forward with approving each state's request individually in light of the fact that there is a backlog of requests and the Commission has been unable to adopt policies and procedures under which it considers requests from states to update their state-specific instructions.

Commissioner Hillman made a motion to approve the State of Colorado's request to update the state-specific instructions of the NVRA to reflect its new mailing address as follows: "Colorado Secretary of State, 1700 Broadway, Suite 270, Denver, Colorado 80290." Commissioner Davidson seconded the motion. The floor was open for discussion. Chair Rodriguez stated despite the absence of policies and procedures, she supports the change because it is simply an update to existing information on the form. The motion carried unanimously.

Commissioner Hillman made a motion to approve the State of New Jersey's request to update the state-specific instructions of the NVRA as follows: "Registration Deadline is 21 days before the election." Commissioner Davidson seconded the motion. Chair Rodriguez invoked the earlier statement that she made in connection with Colorado's request. The motion carried unanimously.

Commissioner Hillman made a motion to approve the State of Rhode Island's request to update the state-specific instructions of the NVRA as follows: "9. Signature. To register in Rhode Island you must: be a citizen of the United States, be a resident of Rhode Island for 30 days preceding the next election, be 18 years old by election day, not be currently incarcerated in a correctional facility due to a felony conviction, not have been lawfully judged to be mentally incompetent." Commissioner Davidson seconded the motion. Commissioner Hillman pointed out that prior to this change one was not eligible to vote if they were on probation or parole. Chair Rodriguez invoked the earlier statement that she made in connection with Colorado's request. The motion carried unanimously.

Commissioner Hillman made a motion to approve the State of Delaware's request to upgrade its state-specific instructions of the NVRA as follows: The registration deadline is now "The 4th Saturday before a primary or general election, and 10 days before a special election." Commissioner Davidson seconded the motion. Chair Rodriguez invoked the earlier statement that she made in connection with Colorado's request. The motion carried unanimously.

Commissioner Hillman made a motion to approve the State of Iowa's request to update its state-specific instructions of the NVRA as follows: "Registration Deadline - must be delivered by 5 p.m. 10 days before the election, if it is a state primary or general election; 11 days before all others. Registration forms which are postmarked 15 or more days before an election are considered on time even if received after the deadline." Commissioner Davidson seconded the motion. Chair Rodriguez invoked the earlier statement she made in connection with Colorado's request. The motion carried unanimously.

Commissioner Hillman made a motion to approve the State of Utah's request to update its state-specific instructions of the NVRA as follows: The "Registration Deadline - 30 days before the election for mail-in applications; 15 days before the election for walk-in registration at the county clerk's office." Commissioner Davidson seconded the motion. Chair Rodriguez invoked the earlier statement she made in connection with Colorado's request. The motion carried unanimously. Counsel Hodgkins reported to the Commissioners she was advised by Mr. Cortes that Utah made a request to update their address but no change was required due to the fact that it was the same address already on the form and, therefore, it was not necessary to propose this change to the Commissioners.

Commissioner Hillman made a motion to approve the State of Georgia's request to update its state-specific instructions of the NVRA as follows: "6.ID Number. Federal law requires you to provide your full Georgia Drivers License number for Georgia State issued ID number. If you do not have a Georgia Drivers License or Georgia ID you must provide the last 4 digits of your Social Security number. Providing your full Social Security number is optional. Your Social Security number will be kept confidential and may be used for comparison with other state agency databases for voter registration identification purposes. If you do not possess a Georgia Drivers License or Social Security number, a unique identifier will be provided for you." Commissioner Davidson seconded the motion. Commissioner Hillman clarified that prior to this updating Georgia was requesting the full Social Security number. Chair Rodriguez invoked the earlier statement she made in connection with Colorado's request. The motion carried unanimously.

Vice-Chair Hunter made a motion to adopt the State of Arizona's request to change its state-specific instructions of the NVRA as outlined in a December 14, 2007, memo from Mr. Cortes to the Commission. Commissioner Davidson seconded the motion. Commissioner Hillman stated her position remains the same and she does not think that EAC should take action on this request while the issue is currently being

litigated. Commissioner Davidson commented that not supporting such a change could result in disenfranchising voters. Chair Rodriguez advised the Commissioners that she is in the process of drafting a statement that will fully articulate her position and reasons for not voting in favor of Arizona's request. Commissioner Gracia Hillman and Chair Rodriguez voted in opposition to the motion. The motion was defeated on a tie vote.

Briefing by the National Association of Election Directors (NASED):

Presenter: Christopher Thomas, Michigan Director of Elections
Reynolds, California Deputy Secretary of State for HAVA Activities

Mr. Thomas expressed his appreciation for being able to address the Commission on behalf of NASED. Through various discussions with representatives from NASED in February and Internet responses, Mr. Thomas provided the following comments/recommendations: That EAC look at its policy concerning maintenance of effort (MOE) and have it conform more closely with HAVA, getting information out to the states in advance so that they can be prepared for the audit process and to address concerns regarding the allocation requirement as set forth in recently posted FAQs on EAC's website.

Presenter: Pat Arp, Wyoming Deputy Secretary of State

Ms. Arp addressed the Commission on behalf of minimally funded states, providing the following comments/recommendation: That the Commission assist the HAVA audit process by (1) Becoming informed about the actual audit process itself, (2) Determine the greatest difficulties for the states, (3) Take the effect of history into consideration, (4) Assign someone or hire someone, if necessary, who was around when HAVA was enacted to help assess the reasonableness of a state's actions. In addition, the Commission's role in the audit process needs to be at the level where policy decisions are made.

Presenter: Chris Reynolds, California Deputy Secretary of State for HAVA Activities

Mr. Reynolds addressed the Commission to provide the following comments/recommendations: That EAC reconsiders its interpretation of allowable costs with respect to voter education and pollworker training and that EAC reconsider its guidance on MOE . Mr. Reynolds further recommendation that EAC's address its position with regard to state plans by: (1) Providing clarification that the EAC does not approve state plans; (2) Clarify what the EAC intends when it says in its guidance to states on applying for new HAVA funding that the EAC will review the state certification and what concerns might be raised by the EAC because this

will presumably delay the allocation of funding; and (3) Clarify whether states that diverge from a state plan but are still in compliance with HAVA will be at risk. And in particular what would the EAC do in a case where the state plan proposes to spend funding but the MOE guidance issued suggests that the funding in that area or the allocability standard should be restricted so that a state would be forced to forego achieving HAVA compliance because it did not have the state or local resources to meet the MOE?

Questions and Answers:

In response to questions by the EAC Commissioners:

Mr. Reynolds and Mr. Thomas responded to the fact that the five-percent match and costs related to maintenance of effort are separate and need to be considered mutually exclusively.

Mr. Reynolds stated that he would provide the Commission with a copy of his written testimony following some amendments along with a letter from California seeking clarification on the MOE requirement, and various articles outlining the importance of pollworker training.

Vice-Chair Hunter recommended that consideration be given towards convening a public open conversation on the topic of state plans in particular.

Executive Director Wilkey expressed his appreciation for the input/suggestions that were given by the representatives from NASED, pointing out that EAC will need to relook at the issues they raised. Vice-Chair Hunter thanked Chair Rodriguez for her hospitality while in Denver.

Adjournment

Chair Rodriguez adjourned the meeting at 2:06 p.m.