

# **Minutes of the Public Meeting United States Election Assistance Commission**

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The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Thursday, November 5, 2009. The meeting convened at 10:02 a.m., EDT. The meeting was adjourned at 2:28 p.m., EDT.

## **PUBLIC MEETING**

### **Call to Order:**

Chair Gineen Bresso Beach called the meeting to order at 10:02 a.m.

### **Pledge of Allegiance:**

Chair Beach led all present in the recitation of the Pledge of Allegiance.

### **Roll Call:**

#### **EAC Commissioners:**

Associate General Counsel Tamar Nedzar called roll of the members of the Commission and found present: Chair Gineen Bresso Beach, Vice-Chair Gracia Hillman and Commissioner Donetta Davidson. Three members were present for a quorum.

#### **EAC Staff:**

Associate General Counsel Tamar Nedzar; Executive Director Thomas Wilkey

#### **Panelists:**

Dr. Shelly Anderson, EAC Deputy Director of Research; Dr. Toby Moore, Project Director, Research Triangle Institute; Karen Lynn-Dyson, EAC Director of Research, Policy and Programs; Matt Weil, Research Program Specialist

### **Adoption of the Agenda**

Commissioner Donetta Davidson moved to adopt the agenda as printed, which was seconded by Vice-Chair Hillman. The motion carried unanimously.

### **Welcoming remarks**

Chair Beach extended her thanks to election officials who submitted their H1N1 flu contingency plans to EAC's online clearinghouse. She also recognized their hard work, along with those of poll workers, during the November 3, 2009, elections. Chair Beach next extended her thanks to everyone that participated in the roundtable discussion that was held on October 13, 2009, on the Accessible Voting Technology Initiative, in addition to thanking Nathaniel Robinson, Kevin Kennedy and their staff at the Wisconsin Government Accountability Board for allowing her to view its elections operations. Chair Beach concluded her remarks by congratulating the New York Yankees on winning the World Series.

Commissioner Davidson extended her congratulations to election officials throughout the nation that conducted elections on November 3, in addition to commending New York State's election officials, poll workers and voters during its recent implementation/transition to new voting equipment. Commissioner Davidson concluded her remarks by pointing out the progression of recent legislation, the MOVE Act which will aid military and overseas voters, and the Civil Relief Act which will aid military voters and their spouses.

### **Old Business:**

#### **Approval of the minutes from the previous meeting**

Vice-Chair Hillman moved acceptance of the minutes from the October 8, 2009, public meeting of the EAC, which was seconded by Commissioner Davidson. The motion carried unanimously.

#### **Report from the Executive Director**

Mr. Wilkey extended a welcome to all in attendance, providing an update on activities pertaining to Voting System Testing and Certification, Requirements Payments, Grants, Research, Policy and Programs, Tally Votes and Other News that have occurred since the October 8, 2009, public meeting.

With regard to Voting System Testing and Certification, Mr. Wilkey reported that EAC continues to work with the National Institute of Standards and Technology (NIST) to resolve comments, make changes to the draft and make policy decisions to the 2005 VVSG, after which EAC

will publicly publish the final version of the VVSG 1.1. Connecticut's recent submission of reports on its pre and post-election audits of memory cards for the 2008 primary and Presidential elections have been posted to EAC's online clearinghouse.

With respect to Requirements Payments, a total of \$54.4 million of the \$115 million of 2008 funds and \$28 million of the \$100 million in 2009 funds have been disbursed to date. Mr. Wilkey announced that a Webinar will be conducted the following week that will focus on how to fill out the Federal Financial Report SF245.

Under Grants, Mr. Wilkey reported that EAC staff is reviewing the comments that were submitted in connection with the October 13, 2009, roundtable on the accessible voting technology initiative grant, and that staff is also in the process of reviewing the comments that were submitted in connection with the pre-election logic and accuracy testing and post-election audit initiative grant. The availability of competitive grant funds through the College Poll Worker and Mock Election programs will be announced later during the month of November via a press release and will also be posted on EAC's website.

Regarding Research, Policy and Programs, the National Academy of Science's study on statewide voter registration databases and a report analyzing the translation of the NVRA into five Asian languages were recently posted to EAC's Website. Mr. Wilkey reported that the public has until November 9, 2009, to comment on proposed information collection for an evaluation of EAC educational products and the 2010 Election Administration and Voting Survey.

Four tally votes relating to the following were certified since the October 8, 2009, public meeting: The use of HAVA funds to remodel office space for use in election administration activities, the use of HAVA funds to purchase a van for use in voter education activities, the purchase of vehicles to use in voter education activities, and designating Alice Miller as EAC's Acting Chief Information Officer.

With regard to Other News, Chair Beach's notes summarizing her observations/experiences surrounding her recent trip to Wisconsin to learn more about their election process has been posted to the Website. Mr. Wilkey thanked the States of Wisconsin, Virginia and California for submitting their H1N1 flu contingency plans. He concluded his remarks by acknowledging New York State's recent transition to new voting equipment, which he was able to personally view.

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

In response to Vice-Chair Hillman's inquiry into when it is anticipated the Commissioners will be presented with the VVSG Version 1.1, Mr. Wilkey stated that he expects it will be around the January 2010 timeframe. In response to Vice-Chair Hillman's question with respect to whether there are other Federal Government websites that list grant opportunities that EAC can link to, Mr. Wilkey pointed out that there is a website EAC will be taking advantage of, which he will announce to the Commissioners as part of his report at the December meeting.

### **New Business:**

#### **Discussion of 2008 Election Day Survey Report**

Dr. Shelly Anderson, EAC Deputy Director of Research, addressed the Commission to present the 2008 Election Day Survey Report, which collected election administration-related data from the 50 states, four territories and the District of Columbia and includes topics such as voter registration, overseas voting, poll workers, early and absentee voting, provisional balloting, and type of voting equipment. The data was captured at both the state and county level. The data collection and analysis were conducted by the Research Triangle Institute (RTI) under the direction of Dr. Toby Moore. Dr. Anderson spoke briefly about the success of the survey project and the achievement of significantly higher response rates than in previous years.

Dr. Toby Moore, Project Director, Research Triangle Institute (RTI), addressed the Commission to present testimony with respect to what RTI did in providing technical assistance with respect to the 2008 survey, what the database was comprised of, the accomplishments and challenges of the survey and suggestions that the EAC might want to consider for improving data collection for the 2010 survey and beyond.

Dr. Anderson addressed the Commission to present key findings from the 2008 Election Day Survey Report, which included an overview of statistics pertaining to domestic absentee voting, early voting, provisional ballots, poll workers and voting technology.

### **Questions and Answers:**

In response to Vice-Chair Hillman's inquiry into whether jurisdictions reported problems downloading/accessing either the Word or Excel-based templates due to their own capacities, Dr. Moore reported that while some states found the Excel-based template to be somewhat cumbersome, there were no difficulties with technological capacity due to the fact that it was not sent directly to local jurisdictions. In response to Vice-Chair Hillman's question into whether the development/improvement of the

survey within the past six years is a normal timeline, Dr. Moore commented that remarkable progress has been made in instituting the survey despite the fact that it is both large and complicated. He further pointed out that its progress has been much more rapid than most government-sponsored data collection tools. In response to Vice-Chair Hillman's inquiry regarding the cost implications of implementing a GIS mapping component, Dr. Moore explained that it would be relatively affordable due to the fact that the technology is "off the shelf" and would not require significant customization. In response to Vice-Chair Hillman's question regarding whether the average poll worker age was ascertained as a result of the data collected, Dr. Anderson commented that this information was not calculated.

In response to Commissioner Davidson's question into whether there are issues with respect to either variances or quality of data in how one county reported as opposed to another, such as in the case of Ohio, Dr. Moore stated that while both Ohio and California did a very good job of working with the counties in how they should respond based upon the development of customized instructions, variances will most likely always be an issue with any bottom-up data collection. Dr. Moore explained that reporting problems should continue to improve as long as the timeline improves and states become accustomed to the survey. In response to Commissioner Davidson's inquiry into whether leaving the 2010 survey unchanged will assist states in being able to provide better data, Dr. Moore explained that while states are not trying to prevent corrections and/or improvements to the survey, they would be opposed to wholesale changes or the addition of new information that would cause them to make changes to their data collection and data reporting.

In response to Chair Beach's inquiry into a common theme or challenges that states universally expressed should be taken into consideration for the 2010 survey, Dr. Moore suggested that consideration be given towards streamlining question F7 pertaining to voting technology, in addition to streamlining the number of questions in the 2012 survey. Dr. Moore further suggested that consideration may want to be given with respect to collecting information about voter registration separately via telephone calls to the states prior to the election as opposed to through the survey. In response to Chair Beach's question into whether implementation of the statewide voter registration database has improved both the voting process and the response to the survey, Dr. Moore commented that while improvements to the databases make the survey much easier to complete, its impact on the survey is something beyond what RTI ascertained during its data collection and analysis. In response to Chair Beach's inquiry into why there has not been much of a change in the provisional voting rates since the 2004 general election, Dr. Moore

pointed out that this might be in part due to how differently provisional voting is handled in the different states and jurisdictions.

Vice-Chair Hillman suggested that the Commission may want to consider issuing guidance on provisional ballots based upon the data that has been collected to date due to the fact that this is still a concern among Congress, and others. Mr. Wilkey pointed out that the Commission can anticipate receiving some recommendations from the Research, Policy and Programs Division in the near future regarding how it can strengthen its guidance on provisional voting.

Dr. Moore provided a follow-up regarding Vice-Chair Hillman's previous inquiry into what the average poll worker age was during the 2008 general election, noting it to be age 55. He cautioned that 55 was a calculation by a colleague and should not be definitive, but believed it to be more realistic compared to estimations of the average age of poll workers to be in the 70s.

In response to Vice-Chair Hillman's question regarding would any of the states have reported a level of participation that stopped before a voter submitted a marked ballot, i.e., the voter asked for an absentee ballot, was mailed one, but it was never returned, Dr. Moore commented that it is possible that some states would have included those individuals.

### **Discussion of 2008 UOCAVA Report**

Dr. Anderson addressed the Commission to present the 2008 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) report, highlighting some of the results pertaining to the number of UOCAVA ballots requested, transmitted, submitted for counting by both type of ballot and type of voter and ballots that were counted and rejected and the reasons for rejection.

### **Questions and Answers:**

In response to Commissioner Davidson's question regarding what may account for the difference in numbers of participation of UOCAVA voters as set forth in the Federal Voting Assistance Program (FVAP) report from the 2008 UOCAVA report, Dr. Moore commented that RTI purposefully did not calculate participation from the survey, that it only tracked the ballots due to the fact that voters covered by UOCAVA are voting but are not being tracked properly by their states or jurisdictions. In response to Commissioner Davidson's question regarding whether the reason for not having any data from states regarding their UOCAVA voters may be in part due to their state laws, Dr. Moore pointed out that while RTI was provided with some data from all 55 states and territories, there are some

states that do not separate out UOCAVA voters from their regular transmitted absentee voters. He further pointed out that it varies widely across states as to their top down or bottom up data collection nature, in addition to their responsiveness and interest in participating, which he anticipates will increase over time and is something that the EAC may want to build on in 2010.

For the benefit of the public, Dr. Anderson explained the difference between a precinct and a polling place, in addition to what accounts for the reduction in the number of polling places.

In response to Chair Beach's inquiry into what may be attributing to the late submission of UOCAVA ballots in states, Dr. Moore responded that while RTI did not analyze the data for that purpose, several recent PEW reports and recent research by the Overseas Vote Foundation (OVF) have looked into this question.

**The Commission recessed for lunch at 11:44 a.m. and reconvened at 1:06 p.m.**

**New Business: (Cont'd)**

**Discussion of Election Management Guideline Chapters**

Karen Lynn Dyson, Director of Research, Policy and Programs, addressed the Commission to explain the process by which five new chapters to the Election Management Guidelines (EMG) program were produced, which included working groups that were convened in Washington, D.C. and Philadelphia, PA, a review of the chapters by the contractors and EAC staff, in addition to a review by both the Board of Advisors and Standards Board via EAC's virtual meeting room.

Matthew Weil, Research Program Specialist, addressed the Commission to provide a brief summary of the contents of the following five new EMG chapters:

1. Building Community Partnerships.
2. Canvassing and Certifying an Election.
3. Communicating with the Public.
4. Conducting a Recount.
5. Provisional Ballots.

## **Questions and Answers:**

In response to Vice-Chair Hillman's question, Mr. Weil pointed out that with the issuance of these new five chapters, 16 EMG chapters will have been released in total. Three other chapters, for which working groups were convened in September, are in the process of being developed on the topics of Technology in Elections, Accessibility and Office Administration. Ms. Lynn-Dyson pointed out she anticipates that these three chapters will be completed by the first quarter of 2010, followed by a vetting/review process. Vice-Chair Hillman also asked for clarification of whether or not screen captures in the document will also provide links to those pages. Ms. Lynn-Dyson stated in the past that the EAC has, and Mr. Weil clarified that it will be included in the current chapters.

In response to Commissioner Davidson's inquiry into what type of concerns were raised in the 300 comments that were submitted by members from both EAC's Standards and Advisory Boards, Ms. Lynn-Dyson explained that some of the concerns centered around the fact that some of the sections did not apply to their state or jurisdiction. Some of the commenters also provided examples for inclusion in the chapters.

In response to Chair Beach's question regarding how varying state laws were taken into account when drafting the EMG chapters, such as in the chapter on Conducting a Recount, Mr. Weil explained that the chapters are compiled in such a way that they bring to light all possibilities that jurisdictions could think about doing and adapting to their particular jurisdiction. He also pointed out a disclaimer was inserted reminding states/jurisdictions that they must follow their own state laws. In response to Chair Beach's inquiry into what steps will be taken to disseminate these products, Mr. Weil explained that not only will the chapters be available on EAC's website and Ms. Lynn-Dyson explained that historically, they have been provided to a very comprehensive mailing list of over 5,000 election officials. She anticipated a similar approach, moving forward. In response to Chair Beach's final question regarding to what extent the content of the chapters was based on input from the working groups, in addition to the Standards and Advisory Boards, Mr. Weil commented that the content was derived directly from the working groups, in addition to outside research and EAC staff knowledge.

In response to Vice-Chair Hillman's follow-up inquiry, Mr. Weil confirmed that each EMG chapter will have a Quick Start Guide though there may be a backlog and some Quick Starts do not have a corresponding EMG chapter.

## **Consideration of Translations of National Voter Registration Act Form**



Karen Lynn Dyson, Director of Research, Policy and Programs, addressed the Commission to present testimony with respect to the translation of the National Voter Registration form (NVRA) into five Asian languages of Chinese, Japanese, Korean, Vietnamese and Tagalong as part of EAC's Language Accessibility Program. Ms. Lynn-Dyson provided a brief overview concerning the background of the translation project, after which she presented the following three options for the Commission's consideration regarding the translation of the NVRA form:

1. Monolingual translation of the NVRA form.
2. Bilingual translation of the NVRA form.
3. Monolingual and bilingual translation of the NVRA form.

Also presented to the Commissioners were the costs and timeframe associated for translating the form.

Also present was Leo Brenninkmeyer on behalf of Compass Languages.

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

In response to Vice-Chair Hillman's question with respect to whether there are other languages covered under the Voting Rights Act that the EAC will want to consider translating the NVRA form into following completion of the five Asian languages, Ms. Lynn-Dyson responded in the affirmative, pointing out that following completion of the Census there will be additional languages that the EAC may want to consider translating, those being Russian and Arabic. Ms. Nedzar advised the Commissioners that she would provide them with a more definitive list/figure at a later point during the meeting.

In response to Commissioner Davidson's inquiry, Ms. Lynn-Dyson pointed out that to date there has been a Spanish translation of the NVRA. Vice-Chair Hillman confirmed that both the form and the state and federal instructions are in a monolingual format.

In response to Chair Beach's inquiry into whether there has been an analysis to determine future costs that would be associated with updating the NVRA form due to the difference in state instructions, Ms. Lynn-Dyson reported that while a formal cost analysis has not been completed to date in her estimation anecdotally the cost would be minimal.

In response to Commissioner Davidson's question with respect to whether the form should be translated bilingual or monolingual, given the experience of Compass Languages, Mr. Brenninkmeyer pointed out that

while there is a comfort level involved on the part of the user, election officials will need to make sure that they will be able to process the form when it is not written in their Latin alphabet in order to be able to verify the content of the form. In response to Commissioner Davidson's inquiry into whether registrants can be requested to fill the form out in English, Ms. Nedzar pointed out that she does not see an issue with doing so.

In response to Chair Beach's inquiry into whether states and jurisdictions not covered under Section 203 of the Voting Rights Act will be required to accept the new form if translated into the additional languages, Ms. Nedzar pointed out there is a provision under NVRA that requires that requires states to accept and use the form. With respect to whether they would be required to do the translation if it's not in English, Ms. Nedzar explained that they may have to employ additional resources to do so. She also recommended that consideration be given towards including a statement that requests registrants complete the form in English.

In response to Vice-Chair Hillman's inquiry into what type of assistance EAC would be able to provide a jurisdiction with regard to translation issues, Ms. Lynn-Dyson pointed out that Compass Languages provided EAC staff some ball park estimates on what this would cost.

In response to Commissioner Davidson's follow-up question regarding how quickly translation of the NVRA form for states with same-day registration would occur, Mr. Brenninkmeyer confirmed that it would take place instantaneously by means of centralized over-the-phone support system. In response to Commissioner Davidson's follow-up question regarding whether states prefer a monolingual over a bilingual form, Ms. Lynn-Dyson pointed out that while the tendency was towards monolingual, there was not a unanimous response.

Discussion was held on Vice-Chair Hillman's suggestion that consideration be given towards the following fourth option for the translation of the NVRA: Having the bilingual form and monolingual instructions for all five Asian languages. Ms. Lynn-Dyson commented that she would be very comfortable in moving forward with this option. Mr. Brenninkmeyer confirmed the total cost for bilingual form and monolingual instructions as set forth in its quote to the EAC.

Ms. Nedzar reported back to the Commissioners that there are approximately 12 additional languages covered under the Voting Rights Act that the EAC may want to consider translating the NVRA form into.

Vice-Chair Hillman made a motion that EAC should proceed to translate the National Voter Registration form into each of the five Asian languages

with a bilingual form and monolingual instruction on each. The motion was seconded by Commissioner Davidson and carried unanimously.

Commissioner Davidson made a motion to include a statement on the NVRA form requesting that it be filled out in English, which was seconded by Vice-Chair Hillman. The motion carried unanimously.

### **Commissioners' Closing Remarks**

Commissioner Davidson clarified that her opening remarks in which she spoke about the two pieces of recent legislation, the MOVE Act and the Civil Relief Act, was not intended to imply EAC's position in any way, but only to report on their progress.

Chair Beach reported that time will be allotted at the December public meeting to discuss both the MOVE Act along with other UOCAVA issues. Chair Beach concluded by announcing that both the 2008 Election Day Survey and 2008 UOCAVA reports have been posted to EAC's Website.

**Meeting was adjourned at 2:28 p.m.**