

**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 Tuesday, September 21, 2010. The meeting convened at 9:05 a.m., EDT. The meeting was adjourned 12:00 p.m., EDT.

**PUBLIC MEETING**

**Call to Order:**

Chair Donetta Davidson called the meeting to order at 9:05 a.m., EDT.

**Pledge of Allegiance:**

Chair Donetta Davidson 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 Donetta Davidson, Commissioner Gracia Hillman and Commissioner Gineen Bresso. Three members were present for a quorum.

**Senior Staff:**

Executive Director Thomas Wilkey; Associate General Counsel Tamar Nedzar.

**Panelists:**

Brian J. Hancock, Director, Voting Testing and Certification; Jane Platten, Cuyahoga County Board of Elections; Matt Masterson, Deputy Director, EAC Voting Testing and Certification

## **Adoption of the Agenda**

Commissioner Hillman moved to adopt the agenda, followed by a brief discussion, after which Commissioner Bresso seconded the motion. The motion carried unanimously.

## **Welcoming remarks**

Chair Davidson welcomed all those joining the meeting either in person or via webcast and was pleased to announce the appointment of Mark Robbins, who will be serving as EAC's General Counsel beginning September 27, 2010. Chair Davidson also encouraged everyone to view EAC's newly designed website and provide comments/feedback. She concluded her remarks by reminding everyone that September has been designated as National Voter Registration Month.

Commissioner Hillman encouraged members of the public, in connection with National Voter Registration Month, to check whether they are registered to vote, and to check their State law requirements so that they do not miss the opportunity to register. Commissioner Bresso also encouraged members of the public to check their voter registration status, to know where their polling locations are, and also to check whether their State offers early voting. Commissioner Bresso shared some highlights from her recent attendance at the 19<sup>th</sup> Annual Association of European Election Officials Conference that was held in Tbilisi, Georgia, in addition to highlights from her observations while visiting several polling locations in Maryland and the District of Columbia on Primary Day. She extended her thanks to all the poll workers who served in the past, and to those who are currently serving.

## **Old Business:**

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

Commissioner Hillman moved adoption of the minutes from the August 18, 2010, public meeting, which was seconded by Commissioner Bresso. The motion carried unanimously.

Commissioner Bresso moved adoption of the minutes from the August 18, 2010, public hearing, which was seconded by Commissioner Hillman. The motion carried unanimously.

## **Report from the Executive Director**

Executive Director Thomas Wilkey extended a welcome to everyone in attendance, provided some brief comments in connection with his travels to several polling sites in New York, Maryland and the District of Columbia on Primary Day, encouraged everyone to check their voter registration status, after which he provided an update on activities that have taken place since the Commission's August 18, 2010, public meeting in the areas of testing and certification, requirements payments and tally votes. Mr. Wilkey further reported that public comments on proposed changes to the NVRA regulations are being accepted through November 23, 2010, in addition to announcing that ES&S was issued a certification update for its Unity 5.0.0.0 in connection with two requests, the first, relating to a source code review, and the second, to change voting system test labs for the remainder of the system's test campaign. Mr. Wilkey concluded his remarks by thanking the nearly 200 individuals who have signed up to receive automatic e-mail alerts from EAC's Web site.

### **Questions and Answers:**

In response to Commissioner Hillman's question with respect to what accounts for the February 2011 deadline for the grant competition for the pre-election logic and accuracy testing and post-election audit, Mr. Wilkey explained that rather than catching State and local jurisdictions in the middle of a busy election season, it was decided that it would be advantageous to prolong the deadline in order to ensure that EAC receives good, solid applications.

In response to Commissioner Bresso's question into whether ES&S's two requests in connection with its Unity 5.0.0.0 voting system will impact the timeframe for certification, Mr. Wilkey stated that it would not. He also went on to comment with respect to what may account for a vendor's request to change test labs and how these requests are handled and approved by the Testing and Certification Division's Program Director.

Commissioner Hillman suggested that consideration be given to inviting vendors to the December meeting in order to give the Commission an opportunity to speak with them about their experiences with elections and also the testing and certification process. Chair Davidson concurred and also suggested inviting election officials, in addition to the vendors.

## **New Business:**

### **EAC Quality Monitoring: Creating a Successful Partnership**

Chair Davidson led off the presentation by providing a brief overview of the function and goals of EAC's Quality Monitoring Program.

Presenter: Brian J. Hancock, Director, EAC Voting System Testing and Certification, addressed the Commission to provide testimony with respect to EAC's Quality Monitoring Program pertaining to how it conducts a fielded system review, how it utilizes the information it gathers from fielded system reviews, and what is involved in the informal inquiry process.

Mr. Hancock also provided insight into EAC's successful collaboration with Cuyahoga County, Ohio, in connection with an anomaly that occurred in the ES&S DS200 precinct count optical scan voting device during its pre-election logic and accuracy (L&A) testing prior to the May 4, 2010, Primary election, and also during the May 4<sup>th</sup> election.

Presenter: Jane Platten, Director, Cuyahoga County Board of Elections, testified before the Commission to outline the anomaly that first occurred with its DS200 scanners during logic and accuracy (L&A) testing in April of 2010, and also during the May 4<sup>th</sup> Primary election, in addition to her positive experience in dealing with EAC's quality monitoring process and voting system anomaly reporting.

Ms. Platten requested that EAC consider the following suggestions towards improving its system testing and operations: Continue to infuse practical election experience into its learning process when dealing with new systems and/or an already certified system that experiences problems; continue to invite election officials into the resolution process; continue to visit onsite testing and Election Day operations; consider revising the vendor reporting requirements when systems certified by the EAC experience operational problems; consider sending communications to counties of EAC certified equipment when there are problems; and, implementing a user's database which is easily accessible and links election officials, vendors and the EAC to one another thereby creating accountability and transparency.

## Questions and Answers:

In response to Commissioner Hillman's first question into what the Testing and Certification Division does when it is not invited or granted permission by a State or local to review a fielded voting system that is experiencing problems, Mr. Hancock stated that because the program is voluntary, the most EAC could do would be to make it known that they are aware of the issue, whatever it may be. Commissioner Hillman expressed concern that EAC should not be viewed as either cooperative or heavy-handed with respect to monitoring jurisdictions in terms of their participation in the Quality Monitoring Program, but that EAC's responsibility is monitoring the quality and functionality of the systems that it certifies, whether or not the State is participating in the certification program or not. Mr. Hancock also explained that "Federal election" as currently defined in the Testing and Certification Program Manual is in the process of being expanded to include pre-election logic and accuracy testing, as well as post-election auditing, so that if anomalies occur during this timeframe, manufacturers will be required to report these problems. In response to Commissioner Hillman's question pertaining to how Ms. Platten was able to identify other jurisdictions that were using the DS200 system, she explained that this was accomplished through research to identify those communities that use the same system, and also, through discussions with the vendor, not only when the system was being purchased, but also during the time period that the problem was encountered. In response to Commissioner Hillman's question as to whether EAC will eventually be a resource where State and local election officials can go to see who else is utilizing their same system, Mr. Hancock stated that the communications department is working on creating an interactive map for posting on EAC's Web site, which will contain jurisdictions utilizing all EAC certified voting systems anywhere throughout the country. In response to Commissioner Hillman's inquiry into whether every piece of voting equipment is tested in Cuyahoga County, Ms. Platten confirmed that all of the 1,200 DS200 scanners are tested during a L&A election simulation. She also explained that during the rebooting phase, it was determined, through extensive testing, that no data had been lost. In response to Commissioner Hillman's question with respect to whether the public voiced any concerns into whether their votes were going to be captured and recorded accurately in light of the reported problems with the DS200s, Ms. Platten replied that despite the fact that there was going to be public fallout, in terms of confidence, to some degree, Cuyahoga County was able to proceed with an accurate, efficient and transparent election. She further pointed out that both the community and the media were invited in to discuss the situation at a public meeting, immediately, upon the problem being discovered. Ms. Platten also explained that while the problem has not been fixed, to date, the vendor is currently working with EAC in resolving the problem.

Commissioner Bresso began by inquiring if this was the first EAC review of a fielded system, which Mr. Hancock confirmed that it was. In response to Commissioner Bresso's inquiry into whether there is anything in the 2005 Voluntary Voting System Guidelines (VVSG) under the testing requirements that could have captured the problem encountered in Cuyahoga County, Mr. Hancock pointed out that it was hard to tell because it was not 100 percent clear that the issue had been resolved. Once the problem has been resolved, his division will be taking a closer look to determine whether this could have been caught during testing. He further pointed out that testing, no matter how careful, will never duplicate everything that happens in an election jurisdiction. Commissioner Bresso asked about Mr. Hancock's testimony in which he stated that a manufacturer may be notified of an informal inquiry, to which Mr. Hancock explained that perhaps in a situation where the fix is easy and could be handled by his division, they may not notify a manufacturer, but that he feels it is prudent in all cases and certainly acted accordingly in this instance. In response to Commissioner Bresso's question about what the informal inquiry process entails, Mr. Hancock explained that first the division speaks with the jurisdiction in question to see if the report, which can come from anywhere – a newspaper article, a phone call from a voter, etc. – is credible. This also allows for the jurisdiction to describe what the actual issue is that is being experienced. The next step is to speak with the manufacturer to understand what steps are being taken to mitigate or fix the issue, and then the division talks to other jurisdictions with the same system to ascertain if there are similar issues that may suggest a systemic problem or if it is a bigger problem related to the manufacturing process. The issue in question has taken longer to resolve partially because this is the first informal inquiry being performed, and also partially because the random nature of the anomaly has made it more difficult to get a handle on what the real problem is. He also confirmed that during the testing phase, the lab did not encounter the anomaly experienced by Cuyahoga County.

In response to Commissioner Bresso's question with respect to how long Cuyahoga County has been using the DS200 voting system and also how the county went about purchasing the system, Ms. Platten explained that her county has been utilizing the DS200 system since September of 2009, after which, she provided a detailed history of how it became an ES&S user. In reply to Commissioner Bresso's inquiry into what role the manufacturer has played and whether their role should be expanded, Ms. Platten commented that while the experience with the manufacturer was a positive one, communicating with and depending on the vendor for information at the EAC-level is not enough; that it has to be a three-pronged communication level of discussion. In response to Commissioner Bresso's inquiry into what, in particular, the EAC should be aware of, in terms of the Brennan Center's report on "Voting System Failures: A

Database Solution,” Ms. Platten pointed out the importance of a clearinghouse database in which the vendors, users, and the EAC could freely exchange information on anomalies/problems that are encountered. She also noted the report recommends that the clearinghouse be accessible to the public.

In answer to Chair Davidson’s inquiry into whether the anomaly would have been discovered only through Cuyahoga County’s L&A testing that is provided by the manufacturer, Ms. Platten responded that it is her belief that it would not have been found; that it was only through further testing done by her county that it was discovered. In response to what additional steps EAC could take to demonstrate the value of corroboration, as in the case of Cuyahoga County, Mr. Hancock stated that publicizing the work that was done, such as, in the division’s newsletter, and also EAC staff and/or the Commissioners discussing the topic at election officials’ meetings would be a mechanism towards more open, comfortable communication with States. In response to Chair Davidson’s inquiry into what EAC could do to encourage more election officials to take part in the Quality Monitoring Program, Ms. Platten suggested that one step EAC could take would be to send election officials a letter introducing and welcoming them to the program.

**The Commission recessed at 10:35 a.m. and reconvened at 10:50 a.m.**

**New Business: (Cont’d)**

**Consideration of VVSG 1.1 Policy Issues Updates**

Presenter: Matt Masterson, Deputy Director, EAC Testing and Certification Division, addressed the Commission to provide some brief testimony with respect to the terminology and context of the following four sets of voting system standards/guidelines that the Testing and Certification Division works with: The 2002 Voting System Standards (VSS); the 2005 VVSG; the revision to the 2005 VVSG; and, the next iteration of the VVSG.

He explained that EAC’s decision to propose revisions to the 2005 VVSG are to accomplish the following goals:

1. To clarify the guidelines to make them more testable.
2. To enable the National Institute of Standards and Technology (NIST) to create test suites for the proposed revisions.
3. To update portions of the guidelines that could be easily updated without dramatically altering the guidelines.

For the benefit of the audience, Mr. Masterson also explained how the proposed revisions will ultimately improve the 2005 VVSG overall. Mr.

Masterson also clarified that the following five policy decisions he will be summarizing are the only ones that the Commissioners would be considering for the revision to the 2005 VVSG.

### **Proposed Policy Decision #1**

Mr. Masterson summarized policy decision number one related to the synchronization of audio and visual displays as set forth in Volume 1 Section 3.2.5(b) and Volume 1 Section 3.3.2(d), after which he summarized the Standards Board comment that the standard as written could have an unintended impact on vote-by-phone, followed by the recommendation from EAC staff.

### **Questions and Answers:**

In response to Commissioner Bresso's inquiry into where the revision language to the 2005 VVSG came from, Mr. Masterson responded that it came from the next iteration of the VVSG that was compiled by the Technical Guidelines Development Committee (TGDC). Mr. Masterson confirmed Chair Davidson's inquiry that, to date, EAC has not had a vote-by-phone system submitted for certification. In response to Commissioner Hillman's question as to whether Mr. Hancock knows of any circumstance in which removing the requirement for synchronized audio/visual would have an unintended consequence, he explained that while there could be, it is his belief that staff has handled what might be the unintended consequence of losing the usability and accessibility of having synchronized audio/visual by keeping the requirement as it's currently written in the 2005 VVSG.

### **Proposed Policy Decision #2**

Mr. Masterson summarized policy decision number two related to the verification of a paper record and the accessibility of that verification as set forth in Volume 1 Section 3.3.1(e), after which he summarized a comment that was submitted by the Board of Advisors and the recommendation from EAC staff.

### **Questions and Answers:**

In response to Commissioner Bresso's inquiry into whether the date of January 1, 2013, is feasible, Mr. Masterson responded that he is very confident that this date is feasible, in addition to commenting that the accessible technology already exists, as was determined, both at the accessibility roundtable and through public comments, but not in a voting system. He pointed out that test suites have already been developed to address the verification requirement.



### **Proposed Policy Decision #3**

Mr. Masterson summarized policy decision number three related to the use of a standard industry jack and non-manual submission of a ballot as set forth in Volume 1, Section 3.3.4(a)(b)(c), after which he summarized the comments that were submitted by the Board of Advisors and the California Secretary of State and the recommendation from EAC staff.

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

Mr. Masterson confirmed Commissioner Hillman's inquiry that there are currently voting systems in use that do not have the standard industry jack. He further pointed out that while there are systems that have the standard industry jack present, it is not available for the disability community to plug in their own assistive technology. Mr. Masterson also explained that there are two manufacturers, he is aware of, that have proposed solutions that would allow for the submission of the ballot without manual input.

### **Proposed Policy Decision #4**

Mr. Masterson summarized policy decision number four pertaining to the version control and naming of the VVSG, after which he summarized the comments that were submitted by Verified Voting and the Board of Advisors and the recommendation from EAC staff.

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

Mr. Masterson confirmed Commissioner Hillman's inquiry that both the 1990 and 2002 VSS were never assigned numbers. In response to Commissioner Hillman's question with respect to whether EAC, in keeping with the spirit of the Help America Vote Act (HAVA), should have taken steps to take the 2002 VSS as its own, Mr. Masterson stated that, in his mind, Section 2.2.2(e) of HAVA directs EAC to test to the 2002 VSS until such time as it has the 2005 VVSG in place and implemented, which is exactly what EAC did.

In response to Commissioner Bresso's question, Mr. Masterson explained that he is unaware of any law other than HAVA that requires an agency to adopt standards from another agency to make it their own, and to then start naming the document.

In response to Chair Davidson's question to what it would cost, both dollar wise and time wise, to revise the numbering of EAC's trademark certification, Associate General Counsel Nedzar stated that the trademark

application process costs about \$500, after which she pointed out that EAC may have to republish the entirety of the VVSG in the *Federal Register* with the new name, and then, all the references to the different versions in any other place that it has been previously published. She also pointed out that the trademark application process takes about six months and publication in the *Federal Register* would depend on whether the entire VVSG would need to be published or whether it could be incorporated by reference.

In response to Commissioner Hillman's follow-up question, Mr. Masterson confirmed that there are still systems being tested to the 2002 VSS. He went on to explain that these systems were submitted prior to the December 13, 2006, cutoff date that the Commission selected and are still being tested, because they have not shown conformance. He also pointed out that as long as the manufacturer is actively curing the discrepancies found during testing, the system can remain in testing. Mr. Masterson also commented that one issue the Testing and Certification Division is looking at, for the future, is a system's readiness for testing.

#### **Proposed Policy Decision #5**

Mr. Masterson summarized policy decision number five pertaining to ACCURATE's comment concerning the draft of the revision to the 2005 VVSG not containing an implementation date, after which he summarized the recommendation from EAC staff.

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

In response to a question from Commissioner Hillman, Mr. Masterson stated that the current recommendation is to allow 10 months from the date that the Commission adopts the Revised 2005 VVSG for manufacturers to submit systems for testing under both the 2005 VVSG and the Revised 2005 VVSG. After that, systems must be submitted only to the Revised 2005 VVSG. In response to Commissioner Hillman's second question regarding what would be the benefit for manufacturers to submit their systems for testing under the 2005 VVSG or the revision to the 2005 VVSG, Mr. Masterson replied that in addition to a marketing advantage, the proposed revision has updated coding standard requirements that allow for greater flexibility to manufacturers. Chair Davidson requested that Mr. Masterson provide a report to the Commission regarding this topic, following his division's upcoming meeting that will be held with the manufacturers.

#### **Commissioners' Concluding Remarks:**

Chair Davidson announced that EAC's next public meeting/hearing would be held October 14, 2010, in California.

**The public meeting of the EAC adjourned at 12:00 p.m.**