

# United States Election Assistance Commission

## Meeting Minutes – September 30, 2004

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Monday, September 30, 2004 at 10:00 a.m. at the EAC offices located at 1225 New York Avenue, N.W., Washington, DC 20005.

- Call to Order:** Chairman Soaries called the meeting to order at 10:01a.m.
- Pledge of Allegiance:** Chairman Soaries led all present in the Pledge of Allegiance.
- Roll Call:** Chairman Soaries took roll call for the Election Assistance Commission and found present Vice-Chair Gracia Hillman, Commissioner Paul DeGregorio, and Commissioner Ray Martinez.
- Adoption of Agenda:** Chairman Soaries recognized Vice-Chair Hillman who moved to adopt the agenda for the meeting of September 30, 2004. The motion was seconded by Commissioner DeGregorio, and the motion carried unanimously.
- Adoption of Minutes:** Chairman Soaries recognized Commissioner Martinez who moved that EAC adopt the Minutes of the Commission Meeting held September 13, 2004. The motion was seconded by Commissioner DeGregorio, and the motion carried unanimously.
- Updates and Reports:** Chairman Soaries first recognized Margaret Sims of the EAC staff to give an update on the Title II Requirements Payments. Ms. Sims reported that as of today, the EAC had authorized the distribution of over \$639 million in requirements payments for Fiscal Year 2004, and over \$694 million for fiscal year 2003 while over \$985 million in funds remain to be distributed for both fiscal years.
- Chairman Soaries asked Ms. Sims which states and territories had not yet submitted certifications for their requirements payments.
- Ms. Sims noted that Alabama, Arizona, Guam, Illinois, New York, Puerto Rico and the Virgin Islands, had yet to submit certifications. Ms. Sims also noted that the EAC had initiated contact with these jurisdictions and was awaiting response.

Chairman Soaries next recognized Ms. Karen Lynn-Dyson for an update on the college poll worker program.

Ms. Lynn-Dyson stated that the EAC had received over 85 applications for the Help America Vote Act College program from a variety of colleges and universities, community colleges and faith-based organizations. Ms. Lynn-Dyson noted that the applications were reviewed by an 18 member panel, each with experience in grants and grant review, education and elections. 35 of the applicants were selected in the first round of the review process and 15 finalists were ultimately selected to receive the approximately \$627,000 in grants.

Vice-Chair Hillman was recognized and reminded everyone that the EAC Commissioners will be attempting to visit as many of the grantees as possible during their travels between now and November 2, 2004.

Commissioner Martinez was recognized and noted that during their travels, the Commissioners would be encouraging jurisdictions to reach out to college and university campuses to tap into the student population to help fill the need for poll workers and other election day assistants.

Chairman Soaries next recognized Commissioner DeGregorio who introduced Mr. Craig Burkhardt, General Counsel for Technology at the Department of Commerce to give an update on recent meetings of the subcommittees of the Technical Guidelines Development Committee.

Mr. Burkhardt noted that the subcommittees on Human Factors and Privacy, Core Requirements Testing, and Computer Security and Transparency held formal hearings September 20, 21 and 22, 2004. Mr. Burkhardt stated that there were over 80 participants at these meetings and that the Subcommittee Chairs were Ron Rivest of MIT for Computer Security, Whitney Quesenbery of Whitney Interactive Design for Human Factors, and Daniel Shuster of Citibank for Core Requirements Testing.

Mr. Burkhardt noted that all testimony from the hearings would be posted on the web at [vote.NIST.gov](http://vote.NIST.gov), and that individuals could still provide written testimony to the subcommittees via email at [voting@NIST.gov](mailto:voting@NIST.gov).

Vice-Chair Hillman was recognized to update EAC funding issues for fiscal year 2005. The Vice-Chair stated that the House of Representatives had recently approved an EAC budget of \$15 million for salaries and expenses for fiscal year 2005, but that the Senate had not yet taken action on their proposed EAC budget of \$10 million for fiscal year 2005. Vice-Chair Hillman also noted that a continuing resolution, with corrections still to be made, was passed by the House of Representatives funding the EAC at a level equal to an annual budget of \$7.8 million. With this level of funding, the Vice-Chair reported that EAC could continue to publish material changes to State plans in the Federal Register, do the proposed Election Day study, keep the current staffing level, do some travel to assess the election process, and continue to allow NIST to do work with the TGDC.

Chairman Soaries next recognized General Counsel Juliet Thompson to report on the upcoming EAC Election Day data gathering survey.

Ms. Thompson reported that EAC was currently working to comply with the Paperwork Reduction Act requirements, and that a draft of the reporting form would be published in the Federal Register on Monday October 4, 2004, asking states and local jurisdictions to comment on the survey and report the burden required to compile and format the requested information. Ms. Thompson stated that the EAC expected to get the survey out to the states about two weeks before the election.

## **Presentations**

Chairman Soaries next introduced the first group of panelists to discuss provisional voting. This panel was comprised of Ms. Lindsay Daniels, Project Assistant, for the Latino Empowerment and Advocacy Project or the National Council of La Raza (NCLR), Ms. Tanya Clay, Deputy Director of Public Policy, People for the American Way (PAW), and Terry Jarrett, general Counsel, Office of the Missouri Secretary of State.

Ms. Daniels stated that as the largest Latino civil rights organization, NCLR considered the provisional balloting provisions of HAVA a crucial safeguard to the voting process. Ms. Daniels also noted that there were significant challenges to successful implementation of provisional balloting including lack of education about provisional balloting both among voters and among some election workers, and a lack of uniform national standards on how provisional balloting is conducted.

Ms. Daniels stated that NCLR urged the EAC to:

- Articulate the need for further education on the provisional ballot process
- Encourage states to establish uniform standards for provisional ballots
- Help reduce the need for provisional ballots by improving their voter registration system
- Encourage the collection of data on the use of provisional ballots
- Focus on other areas to promote more equitable election administration practices

Ms. Clay began her presentation by noting that PFAW is a national non-profit organization with over 600,000 members. Ms. Clay also remarked that the provisional ballot requirements of HAVA were intended to enfranchise more voters by developing a more uniform and non-discriminatory process. Ms. Clay noted that the provisional balloting process needs to be incorporated with the HAVA required statewide voter registration database to really ensure that all legitimate votes are counted. Ms. Clay also pointed out that at the present time many states were struggling with defining the term “jurisdiction” as it is used in HAVA, and that the implementation of statewide voter registration databases will likely push the definition of “jurisdiction” to be reinterpreted as state, and not only precinct or polling place. Ms. Clay noted that PFAW has requested that states count all votes in races for federal office, no matter where the provisional ballot is cast. Ms. Clay concluded by explaining that the PFAW Foundation had set up the Election Protection Program as a campaign to educate voters on potential provisional ballot problems.

Mr. Jarrett began his presentation by stating that in 2002, Secretary of State Matt Blunt of Missouri supported election reform legislation that included a requirement for provisional voting. The 2002 provisional voting legislation allowed a voter who claimed to be properly registered in the jurisdiction of the election authority to vote a provisional ballot. Mr. Jarrett noted that in Missouri, these provisional ballots were not full ballots, but contained only federal and statewide candidates and issues. Another important feature of the Missouri law was that if, upon investigation, the individual turned out not to be registered, the information on the provisional ballot envelope acted as a voter registration application so that the person would be eligible for future elections.

In the November 2002 general election, Mr. Jarrett reported that 3,603 provisional ballots were cast, and 2,007 of those were ultimately counted. Mr. Jarret went on to state that in 2003, Missouri passed another election reform bill to make sure that Missouri law was consistent with HAVA. In this bill, provisional voting procedures were refined to place the burden for determining the eligibility of a provisional voter on the local election official. Under the new statute, if a voter was determined to be eligible, but is at the wrong polling place, the election workers are to direct the person to his or her correct polling place or to a central polling place so the voter may vote a full ballot. Mr. Jarrett noted that in the August 2004 primary election, 997 provisional ballots were cast, and 460 of those were counted.

Mr. Jarrett concluded his presentation by making the observations that provisional voting has been utilized far less than expected in Missouri, and that when utilized, it has worked smoothly and efficiently at the polling places.

[Question and Answer session with Panel I.]

Chairman Soaries next introduced the second provisional voting panel of Ms. Jean Jensen, Secretary of the Virginia State Board of Elections, and The Honorable Todd Rokita, Secretary of State from Indiana.

Ms. Jensen began the second round of provisional balloting presentations by stating that a form of provisional balloting has been used in Virginia since 1975. Ms. Jensen noted that election officials in Virginia have made good use of technology in order to determine a voter's eligibility at the polls, including the use of cellular phones, walkie-talkies, and hand-held PDA's to communicate with county election headquarters. Ms. Jensen noted that every effort possible was made to get voters to the correct polling place in order to allow them to vote a full ballot. Ms. Jensen also noted that Virginia felt that provisional balloting should only be used in extraordinary circumstances and that election officials should concentrate their efforts into making sure registration applications were processed in a timely fashion so fewer provisional ballots were necessary. Ms. Jensen conclude her remarks by noting that voter education and proper training of voter registrars was he key to making sure all eligible voters have an opportunity to participate in the electoral process.

Secretary Rokita began his presentation by explaining the Indiana process was a precinct based system outlined in Indiana Code 3-11.7-5-2. Indiana stipulates that the county boards of elections examine provisional ballots sealed in secrecy envelopes to determine:

- If the affidavit signed by the provisional voter properly executed
- If the provisional voter is a qualified voter of the precinct
- If the voter claims to have applied to register to vote at a full service voter registration agency, did the voter apply while registration was still open?

If the county board is able to answer all three questions affirmatively, the provisional ballot is declared valid and can be removed from the secrecy envelope and processed.

Secretary Rokita went on to state that one of the strongest arguments for precinct based provisional balloting comes from the neighborhood watch program. With this program, neighbors are best equipped to have the knowledge of determining innocent neighborhood behavior from suspicious behavior. Likewise, many of these individuals serve as poll workers and may know a neighbor even though their name may not appear on the poll list. They will also likely know if an address given by a potential voter is a vacant lot or an abandoned house. Secretary Rokita also noted that prohibiting precinct based provisional voting sends the wrong message about the importance of voting for all offices on the ballot.

Secretary Rokita concluded his presentation by stating that he hoped that the EAC would consider the approach to provisional voting taken by Indiana and recommend it as a best practice for the nation.

[Questions and Answer session for Panel II.]

## **Adjournment**

Chairman Soaries asked for a motion to adjourn the meeting. Commissioner DeGregorio moved to adjourn the meeting; Vice-Chair Hillman seconded the motion, and the motion carried unanimously. The meeting adjourned at 12:16pm

