Minutes of the Public Meeting
United States Election Assistance Commission

Millennium Hotel Minneapolis
Horizons, 14th Floor
1313 Nicollet Mall
Minneapolis, MN 55403-2697

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Wednesday, April 16, 2008. The meeting convened at 1:00 p.m., CDT. The meeting was adjourned at 5:29 p.m., CDT.

PUBLIC MEETING

Call to Order:

Chair Rosemary Rodriguez called the meeting to order at 1:00 p.m., welcoming all in attendance and extending her appreciation for having the opportunity to meet in Minneapolis. Chair Rodriguez was also pleased to announce that the meeting was being webcast, noting that the current and future meetings would be delayed by two days until it is properly put in the Commission's budget.

Pledge of Allegiance:

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

Roll Call:
EAC Commissioners:

EAC General Counsel Juliet Hodgkins called roll of the members of the Commission and found present: Chair Rosemary Rodriguez, Vice-Chair Caroline Hunter, Commissioner Donetta Davidson, and Commissioner Gracia Hillman. Four members were present for a quorum.

Senior Staff:

Executive Director Tom Wilkey and General Counsel Juliet Hodgkins.

Presenters:

Karen Lynn-Dyson, Director, Research Division, U.S. Election Assistance Commission; Meredith Imwalle, President, Winner's Circle Communications, LLC; Edgardo Cortes, Acting Division Director, HAVA Payments and Grants and Election Administration Improvement Programs, U.S. Election Assistance Commission; John Gale, Nebraska Secretary of State; Lance Gough, Executive Director, Chicago Board of Election Commissioners; John Lindback, Oregon Elections Director; Dana E. Chisnell, Consultant, Usability Works; Kathy Dent, Supervisor of Elections, Sarasota County, Florida, President, Florida State Association of Supervisors of Elections; and, Connie Schmidt, Election Management Guidelines, Co-Project Manager, U.S. Election Assistance Commission,

Adoption of the Agenda

Chair Rodriguez asked for a motion to adopt the agenda. Vice-Chair Caroline Hunter moved to adopt the agenda as amended, reversing the order under old business of the vote on the maintenance of effort issue with the vote on the policy regarding HAVA funds. Commissioner Donetta Davidson seconded the motion. The motion carried unanimously.

Approval of the minutes from the previous meeting

Chair Rodriguez asked for a motion to adopt the minutes of the March 20, 2008 meeting. Vice-Chair Hunter moved to adopt the minutes. Commissioner Davidson seconded the motion. The motion carried unanimously.

Old Business

Executive Director:

Thomas Wilkey extended a welcome to all who were in attendance at the meeting.

Mr. Wilkey reported that the following activities have taken place since the March 20, 2008, meeting:

In preparation for the November election, two Quick Start Management guides have been released, the first on "Developing an audit trail" and the second "Serving uniformed and overseas voters." Nine chapters in the Election Management Guidelines will be released during the upcoming summer months.

A majority of EAC's public meetings leading up to Election Day 2008 will include some workshops which will feature experts on key election topics that will be webcast and also available on EAC's website.

Beginning in May EAC's website will offer a <u>Glossary of Election Terminology</u> in five Asian languages along with Asian language content.

Nine intentions to apply for the election data collection grants (five each $2 million grants) have been received to date. The deadline to apply is April 28, 2008. Applications for both the college poll worker and mock election programs are still being accepted. The deadline to apply for these programs has been extended to April 21, 2008.

The UOCAVA survey, State-case studies and unedited draft of the free or reduced postage for the return of voted absentee ballot study are now posted on EAC's website. The voter hotline study is being edited by GPO and will be posted on the website by the end of April 2008.

EAC's 2008 Election Day survey comment period will end on May 19, 2008, anyone interested in submitting comments can do so via the EAC website.

A roundtable for voter advocates and election officials will be held April 24-25, 2008, to solicit feedback concerning the TGDC recommended guidelines. The comment period for the TGDC has been extended to May 5th to ensure that all stakeholders have time to contribute.

Ohio's EVEREST report, a review of Ohio's Voting System Commission by Secretary of State Jennifer Brunner, is now posted on EAC's website.

Two new certification test plans were recently posted on EAC's website and new test plans are added on a regular basis.

A virtual meeting of the Standards Board and Board of Advisors to comment on draft Election Management Guideline chapters will be held April 21-25, 2008.

Questions and Answers:

In response to questions by the EAC Commissioners:

Commissioner Hilman inquired if there has been any feedback on why a relatively low number of States applied for data collection grants. Mr. Wilkey reported some States have indicated they do not want to commit to the $2 million grant allocation because there is no way to determine what would happen if they did not utilize the full amount due to the way the statute is written. Ms. Lynn-Dyson added that states believe this would undertake a tremendous effort in a very short time frame. Commissioner Hilman noted for the record that EAC did not have the opportunity to change any of the guidelines regarding the appropriation of the grants. Chair Rodriguez suggested that the Commission be provided with a point in time report regarding this topic at a special meeting she has called for at the end of the month.

Ms. Lynn-Dyson reported that the finally developed, edited voter hotline study that was presented at the March 20, 2008 meeting is currently being edited to GPO format and will not chance in context. The study could be brought before the Commission for review and adoption at the next EAC meeting.

Vote on Policy Regarding Use of HAVA Funds

Vice Chair Hunter presented the Commission with a proposed draft policy regarding use of HAVA funds, after which she made a motion to adopt the policy. Copies of the policy were made available to the public, which was also posted on EAC's website as of March 20, 2008, and reposted the week of April 7, 2008, for public comment. Commissioner Davidson seconded the motion.

The floor was open for discussion at which time Vice-Chair Hunter set forth her reason for drafting the policy, noting that EAC decisions regarding the use of HAVA funds are not voluntary. Therefore, it is critical that both the Commission and the public have the opportunity to be involved in HAVA funding decisions. Eight States submitted comments supporting the policy, one State commented that they liked the concept but would leave the details up to the EAC, and a group of election advocates were not sure it was the best way to proceed and raised various questions. The policy was modeled after FEC regulations. Vice-Chair Hunter summarized the revisions that were made to the policy following the public comment period.

Commissioner Hillman raised concerns regarding how a State may react to EAC issuing an advisory directly to a local jurisdiction that could be counter to what the State is trying to achieve, whether the

policy may have unintended consequences/implications, and questioned what recourse options States would have if they do not agree with the Commission's decision/response to a question that is raised by a State. Commissioner Hillman encouraged the Board both to maintain its commitment to the process it had started with respect to how it will be establishing policies and procedures and to allow further time for review before adopting the policy. Commissioner Hillman further recommended the establishment of a two Commissioner subcommittee to determine the pitfalls that may exist in the policy.

Chair Rodriguez commented one very positive aspect of the policy is the fact that the Commission is being made aware of the States' questions from the very beginning.

Counsel Hodgkins sought clarification with respect to implementation of the policy regarding paragraph two of the indented material, the second and third sentences. The first sentence reads, "Within ten calendar days we would determine whether or not an opinion is incomplete or not qualified under the policy." The second sentence then says, "We will make a determination if the request is valid within ten days." Following a brief discussion of the matter Vice-Chair Hunter agreed to amend the language on page two in the second indented paragraph, fourth line as follows: "Upon the EAC's determination the request is valid and complete." Vice-Chair Hunter provided clarification regarding the third-party restriction as set forth in the second footnote.

Chair Rodriguez requested a roll call on the motion.

Chair Rodriguez – Yes
Vice-Chair Hunter – Yes
Commissioner Davidson – Yes
Commissioner Hillman – No

The motion carried with a vote of three in favor, one opposed.

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

Vice-Chair Hunter presented the Commission with a proposed modification to EAC Advisory Opinion 07-003-A dated September 6, 2007, regarding Maintenance of Effort Funding. Copies of the policy were made available to the public and was also posted for comment on EAC's website the week of April 7, 2008. Vice-Chair Hunter made a motion to amend EAC Advisory 07-003-A dated

September 6, 2007, that HAVA does not require a State to include local and county government expenditures when determining the maintenance of effort baseline as required by HAVA 254(a)(7). This modification of the advisory does not preclude States from including county and/or local government expenditures when determining the maintenance of effort baseline. This inclusion will be at the State's discretion and not because it is a requirement of Federal law. Vice-Chair Hunter further stated that the modification does not address specifically the extent to which OMB Circular A102 is relevant to the maintenance of effort issue. Commissioner Davidson seconded the motion.

The floor was open for discussion. Chair Rodriguez pointed out that Vice-Chair Hunter agreed to consider tabling the motion due to issues that have been raised regarding the length of time the policy has been available for comment. Commissioner Davidson moved to table the motion until the EAC meets to discuss the issue again. Commissioner Hillman seconded the motion. The motion carried unanimously.

Vice-Chair Hunter made a motion that the EAC refrain from enforcing EAC Advisory 07-003-A until it votes to adopt a policy on the maintenance of effort requirement of HAVA. Commissioner Davidson seconded the motion.

The floor was open for discussion. Vice-Chair Hunter noted for the record that the elections community in general supports the proposed modification to EAC Advisory 07-003-A, noting that nine favorable comments from election directors/Secretaries of State and one comment from a voter advocate group who is in opposition were submitted during the public comment period.

Commissioner Hillman raised a concern with regard to what the EAC would be suspending if it adopts the motion, after which Counsel Hodgkins summarized the seven questions that were raised in EAC Advisory 07-003-A. Commissioner Hillman reiterated her concern that by adopting the motion EAC would be suspending too much with regard to activities that States are engaged in at the present time.

Vice-Chair Hunter amended her motion that the EAC refrain from enforcing EAC Advisory 07-003-A to the extent it requires a State to include local and/or county government expenditures when determining the maintenance of effort baseline as required by HAVA Section 254(a)(7). Commissioner Davidson accepted the

amendment to the motion. The motion carried. Commissioner Hillman voted in opposition to the motion.

The Commission recessed at 2:20 p.m. and returned to public session at 2:31 p.m.

New Business – Presentations

First Time Voter Study Status Report

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

Ms. Lynn-Dyson was pleased to introduce Meredith Imwalle, President, Winner's Circle Communications, LLC, who was charged with creating a series of case studies that highlight the impact on States of HAVA's ID requirements on first time voters who registered by mail and to also conduct several focus groups assessing the impact on voters directly.

Presenter: Meredith Imwalle, President, Winner's Circle Communications, LLC

Ms. Imwalle presented the Commission with the results she gathered during a 12-month study conducted of first time voters that were set forth in two separate reports.

Ms. Imwalle commented briefly on the availability of data, pointing out that the kind of metrics that would have led to a more conclusive report on whether Section 303(b) accomplished what it was intended to, were not available. While many States flagged the individual records of first time by mail registrants who provide ID, the State systems are not capable of producing comprehensive statewide reports of the number of first time voters who registered by mail and showed a driver's license at the polls. States also did not keep records that might have provided details regarding whether Section 303(b) helped increase the accuracy of voter rolls. States when asked to provide lists of only first time voters who registered by mail and voted for the first time in 2006 were unable to do so. Ms. Imwalle reiterated that while these expanded search capabilities are helpful, the States indicated they are not necessary in terms of day-to-day election administration.

The study was able to use enough available data to determine that States have implemented Section 303(b) and that the Law has had diverse effects on state election administration and first time voters.

The first report summarized by Ms. Imwalle included the results of case studies from the following six States: Massachusetts, New Jersey, Montana, North Carolina, Pennsylvania and Indiana. These States were selected because they best met the requirements of the Statement of Work.

The second report summarized by Ms. Imwalle included the results from the focus group meetings that were held in the following counties: Hendricks County, Indiana, Allegheny County, Pennsylvania and Northampton County, North Carolina.

The two major findings from the focus groups exposed the need for voter education and poll worker training. Based upon the focus group sessions, Ms. Imwalle recommended that State and local election officials focus on obtaining what's often referred to as earned media coverage, and also that election officials work to ensure that first time voter ID requirements are explained clearly to poll workers during training sessions and that poll workers apply the requirements correctly and uniformly, possibly providing poll workers with a checklist or script that includes a list of acceptable forms of ID.

Questions and Answers:

In response to questions by Commissioners:

Ms. Imwalle pointed out that education through poll worker training will help to alleviate confusion with respect ID requirements during future elections, that the six States that participated in the study did not keep records of whether they had electors who were eligible to register prior to the implementation of 303(b), and that information which was not gathered through this study could be obtained if States were willing to add some search features to their voter registration databases. Ms. Imwalle responded that the majority of participants in the focus groups were supportive of some form of ID requirement, with the main debate being what kind of ID first time voters should be required to produce and that each of the six States that were studied were able to flag the individual is who required to show ID on their voter record. Ms. Imwalle and Ms. Dyson both responded that the view of the ID requirement for first time voters versus voters who have been participating and do not need to meet this requirement depends on one's political views, something that would need to be studied in greater detail in order to gain a better understanding of this issue.

Voter Information Websites Report

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

Mr. Cortes was pleased to present the Commission with the results of the voter information website study, pointing out that it will be valuable information to election officials when giving consideration to implementing voter information websites. Mr. Cortes noted that he would be providing his recommendation following Mr. Keenan's presentation.

Presenter: Vincent Keenan, President, Publius.org.

Mr. Keenan provided highlights from the 30-month voter information website study that he conducted, commenting that while infrastructure changes are critical, voter information websites promote what may be the best fair election insurance of all; a more informed and engaged voter. Mr. Keenan noted that the recommendations set forth in the report consist of a how-to guide to offer the maximum benefit to voters without jeopardizing personal information and they also represent an initial marker for reference in an area of elections that is sure to grow in the future. The report is not based on particular technologies and does not recommend one programming language or operating system over another. The recommendations do not condemn or overly endorse any one of the websites that were studied but serve as a set of principles that will be viable long enough to aid election administrators create and improve voter information websites until superseded by future EAC recommendations as the technology evolves. Mr. Keenan recommended that the next step for future study on the use of voter information websites should include the development of a set of standardized measurements applied over one or more peak election cycles so that similar quantitative data can be compared.

Mr. Keenan expressed his thanks to Edgardo Cortes, Karen Lynn-Dyson, Tamar Nedzar, Tom Wilkey, EAC staff, the election officials and the experts in the working group for their valuable assistance during this study.

Questions and Answers:

In response to questions by Commissioners:

It was determined that the websites listed in Appendix "D" need some clarification as to whether they are the official States' website address in order to avoid any possible confusion on the part of the reader of the report. It was also recommended that the report be provided to the Advisory Boards through the virtual meeting room for their review and recommendations. The report will then be presented to the Commission for its adoption, after which it will be published and distributed.

The Commission recessed at 3:21 p.m. and returned to open session at 3:39 p.m.

Preparing for Election Day 2008: Ballot Design

Successful Designs for Optical Scan Ballots

Presenter: John Gale, Nebraska Secretary of State

Secretary Gale presented the Commission with a summary of findings, which were gathered from a pilot project that was conducted and paid for in large part by Design for Democracy in the State of Nebraska with regard to optical scan ballot design during the 2006 general election in Cedar and Colfax Counties. Secretary Gale noted that an excellent summary of the project is contained in the June 2007 report entitled "Effective Designs for the Administration of Federal Elections." Secretary Gale provided the Commission with the redesigned ballots that were utilized in the 2006 primary and general elections for its review and comparison. Secretary Gale also set forth the results from the post-election survey and expounded upon suggestions that have been put forth both from graphic artists and usability professionals who have studied the public's behavior concerning items such as font style and size, text alignment, color shading and use of space. Secretary Gale offered comments concerning ballot language and translation issues. He emphasized the point that a limiting factor in making design changes are the capabilities of ballot vendors' software. Secretary Gale expressed his appreciation for the opportunity of both addressing the Commission and having been a part of the pilot project.

Successful Designs for Direct Recording Device Ballots

Presenter: Lance Gough, Executive Director, Chicago Board of Election Commissions

Mr. Gough presented testimony regarding the proven system of touchscreens, DREs, pointing out that they empower individuals with disabilities to vote unassisted, they lend themselves to early voting, and they lend themselves to language accessibility. Mr. Gough pointed out several problems with touchscreens that he has been made aware of by candidates and voters alike. He also stressed the importance of keeping the design simple, to make testing and the documentation of testing a priority, to be consistent in the way touchscreens and optical scan ballots are designed, to utilize focus groups consisting of high school students, college students and senior citizens prior to an election for the purpose of seeking feedback and planning ahead for the future, and concentrating on a uniform set of guiding through the touchscreen for blind voters. Mr. Gough concluded his remarks by pointing out the importance of keeping voters part of the process.

Successful Designs for Paper Ballots

Presenter: John Lindback, Oregon Elections Director

Mr. Lindback provided testimony to the Commission with respect to the importance of good design regarding paper ballots. Mr. Lindback briefly addressed why some counties are choosing to use paper ballots over optical scan ballots. Mr. Lindback presented the Commission with the following Ten Commandments of ballot design, which he pointed out are based on solid research and expertise from design professionals who have been active and supportive of the work Design for Democracy: Utilize lower case letters, avoid centered type, use large enough type, utilize only one type style, support process and navigation with the design, make it clear to the voter where they are supposed to go next through effective design, utilize accurate instructional illustrations, utilize informational icons only, use contrasts such as shading or color functionality while never relying on color exclusively, and establish a hierarchy of information so the voter knows what is most important and what is secondary on the ballot. Mr. Lindback strongly urged that election officials read a book published by Marcia Lausen entitled "Design for Democracy: + Election Design" which sets forth the results that following solid design can accomplish. Mr. Lindback emphasized the need for implementation of the changes in order to ensure a well designed ballot and the

need for follow-up to ensure that elections officials are utilizing the various resources that have been made available in a productive way and, where appropriate, to also incorporate EAC's design study into the Voluntary Voting System Guidelines (VVSG) as well as the Management Guidelines for elections officials. Mr. Lindback concluded his remarks by emphasizing the fact that the EAC is an appropriate key player in educating elections officials who utilize paper ballots regarding the use of effective design principles.

Ballot Design, Accessibility and Usability

Presenter: Dana E. Chisnell, Consultant, Usability Works

Ms. Chisnell provided testimony regarding how accessibility and usability figure into ballot design, which include simple, plain language along with, clearly worded ballots and instructions. In order to know whether a ballot design is usable and to detect whether there is confusion in the language and/or design is confusing Ms. Chisnell recommended individual sessions where voters can be observed in the act of voting. Incorporating usability testing into the local ballot creation process along with best practices on ballot design and ballot language will reduce overvotes and undervotes, minimize voter and election official errors, reduce the need for recounts and improve the voting experience overall. Including people who have disabilities, as participants in these usability studies will help identify issues with accessibility as well. Additionally, election officials need both training and tools to learn how to do usability testing because one master best practices ballot cannot cover every local need.

Ms. Chisnell provided details regarding the success of Usability Professionals' Association development of the LEO usability testing kit for use by local elections officials to evaluate the design layout and instructions on ballots prior to elections. A current version of the kit is available on the Usability Professionals' Association website.

The Ballot Design Process from Start to Finish

Presenter: Kathy Dent, Supervisor of Elections, Sarasota County, FL and President, Florida State Association of Supervisors of Elections

Ms. Dent provided a detailed description of the pre-design and actual design requirements of ballots from start to finish for both

optical scan ballots and touchscreens, DREs, in the State of Florida.

Ms. Dent emphasized the fact that additional change with regard to ballot design needs to come from the top down, requesting the EAC's assistance during the initial certification of voting systems by insisting that the design standards that have been established as best practices are taken into consideration by the vendor; that local users have the ability to format a ballot based on State statute, rule and variation in ballot length; that EAC work with State officials in the development of uniform rules using professional design experts for each voting system certified; and, that legislators are informed as to the sometimes unintended consequences delivered to the elections administrators, particular in ballot design.

EAC Resources for Ballot and Polling Place Designs

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

Ms. Lynn-Dyson provided highlights from a CD-ROM that was created as a result of an 18-month study on ballot design/redesign. 6,000 copies of the CD-ROM were distributed to local elections officials across the country. In addition, Design for Democracy conducted ten research events along with 54 usability evaluations. Ms. Lynn-Dyson summarized the critical design elements specified in the report in addition to the basic design principles for optical scan systems and DREs,

An abridged version of the document is available on EAC's website and it is anticipated that the Research Department will be working with folks in the field within the next six months.

Presenter: Connie Schmidt, U.S. Election Assistance Commission, Election Management Guidelines, Co-Project Manager

Ms. Schmidt expressed her appreciation to the Commissioners and the EAC in continuing its mission to conduct research and collect guidelines and best practices towards improving election administration.

Ms. Schmidt highlighted several of the tips/suggestions that were incorporated into the Quick Start Management guidelines chapter on ballot preparation, which was released in September '06. Ms. Schmidt also highlighted several points from a new chapter in the Election Management Guidelines on ballot preparation and design

that will soon be released, with the goal being to integrate this information into the VVSG where possible.

Questions and Answers:

In response to questions by the EAC Commissioners:

Secretary Gale reported that the pilot project in Nebraska demonstrated that a lack of flexibility in vendor software creates limitations in producing the best-designed ballot. Mr. Gough reiterated the fact that changing ballot design is a slow process due to the time it takes for a vendor to receive certification of a voting system in addition to State statutes, which cannot be changed overnight.

Commissioner Hillman recommended that the Commission approach the National Association of County Officials (NACO) and the State legislators and request that the panel presentation on ballot design be placed on their summer conference agenda.

Mr. Lindback responded to how the EAC may want to craft the VVSG with regard to the required design functions of voting systems.

Mr. Gough responded to the fact that the legislature needs to be made aware that States need additional time when a change to a ballot is necessary.

Mr. Wilkey extended his thanks to everyone for their attendance and for the great amount of work that has been put into the important topic/research regarding ballot design, pointing out that there is still much to be done in this area.

Chair Rodriguez extended her appreciation to the panelists for their valuable input and to Mr. Posner for hosting the meeting in Minneapolis.

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

Meeting was adjourned at 5:29 p.m., CDT.