

Minutes of the Public Meeting United States Election Assistance Commission

Held at
1225 New York Avenue, NW
Suite 150
Washington, DC 20005

The following are the minutes of the meeting of the Election Assistance Commission (“EAC”) held on Tuesday, August 5, 2008. The meeting convened at 12:00 p.m., EDT. The meeting was adjourned at 1:18 p.m., EDT.

PUBLIC MEETING

Call to Order:

Chair Rosemary Rodriguez called the meeting to order at 12:00 p.m.

Pledge of Allegiance:

Chair Rodriguez invited Minnesota Secretary of State Mark Ritchie to lead all present in the recitation of the Pledge of Allegiance.

Roll Call:

EAC Commissioners:

Executive Director Thomas Wilkey called roll of the members of the Board of Advisors and found present: Chair Rosemary Rodriguez, Vice-Chair Donetta Davidson, Commissioner Gracia Hillman. Three members were present for a quorum.

Senior Staff:

Executive Director Thomas Wilkey, General Counsel Juliet Hodgkins

Presenters:

Karen Lynn-Dyson, Director of Research, U.S. Election Assistance Commission, Maisha Leek, Special Assistant, U.S. Election Assistance Commission

Noted Guests:

Minnesota Secretary of State Mark Ritchie, Ohio Assistant Secretary of State Christopher Nance

Adoption of the Agenda

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

Welcoming remarks

Chair Rodriguez was pleased to announce that Gineen Beach, formerly with the House Administration Committee for the Minority, was recently named to the Commission, subject to Senate confirmation. Ms. Beach will be filling the vacancy which was left by Caroline Hunter who was appointed to the Federal Election Commission.

Chair Rodriguez reported that the Commission has accepted the resignation of General Counsel Juliet Hodgkins, after which she extended her gratitude to Ms. Hodgkins for both her thoroughness and level of commitment she gave on behalf of the Commission.

Vice-Chair Davidson, Commissioner Hillman and Executive Director Wilkey offered words of appreciation to Ms. Hodgkins for the wisdom and guidance she provided to the Commission since its inception.

Ms. Hodgkins extended words of appreciation to the Commissioners for both the honor and privilege she had serving as its General Counsel and to also express her appreciation that the Commission has accepted her resignation in order that she can devote more time and energy to her family. Ms. Hodgkins noted that she would be helping the Commission during the time of transition in securing its next General Counsel.

Old Business

Approval of the minutes from the previous meeting:

Chair Rodriguez asked for a motion to adopt the minutes of the June 19, 2008, Commission meeting. Commissioner Hillman moved to adopt the minutes. Vice-Chair Davidson seconded the motion. The motion carried unanimously.

Report from the Executive Director:

Tom Wilkey extended a warm welcome to everyone in attendance at the meeting, noting that the Commission is very busy on several fronts in preparation for Election Day 2008.

Mr. Wilkey reported that the following activities have taken place since the June 19, 2008, Commission meeting:

Under election administration, the following five new advisory opinions will be posted to the Web site, all which were decided by a tally vote of three to zero: The purchase of replacement equipment for previously funded HAVA equipment, the application of indirect cost rates, the use of HAVA funds for voter registration activities, the application of the Maintenance of Effort requirement to States that installed a voter registration database prior to HAVA and that subsequently met the requirements of HAVA, and the waiver of State-matching requirements in accordance with Title 48 Section 1469(a)(d) of the United States Code. The Commission also voted unanimously to appoint Richie D. Vincent as the EAC contracting officer and to add new subject matter to today's public meeting. The NVRA form has also been updated to reflect recent requests to update State instructions, which has been made available on the Web site.

Under research, a virtual meeting of the Board of Advisors to solicit comments on the Alternative Voting Methods Report will be taking place later in the week, which can be viewed on the Web site. The near final paper version of the 2008 Election Day Survey is in the process of being prepared, which will be mailed in mid August.

Under testing and certification, Unisyn Voting Solution has submitted its Uni-System Open Elect Voting System Version 1.0, for testing. A complete list of voting systems applying for certification is posted on the Web site. CIBER has been invited to apply for accreditation following NIST NVLAP's recent recommendation. The letter is posted on the Web site. Correspondence from EAC expressing concerns to SysTest Labs regarding communication between SysTest Labs and election system and software has been posted on the Web site.

Under Web site updates, a section has been included on EAC's home page containing links for election officials which makes it easier to find information, such as proposals and guidance up for comment, and existing policies and guidance issued by the EAC. Chair Rodriguez's two separate statements on poll worker recruitment and overseas and military voting have also been posted to this new section along with Commissioner Hillman's written testimony before the House Committee on Judiciary, which may be accessed in the archives of news updates and in the Commissioner's section of the site.

Public comments are currently being accepted on draft guidelines and material changes in the administration of HAVA State plans, which ends August 11, 2008, in addition to proposed rulemaking for Freedom of

Information Act, Government and the Sunshine Act, and Privacy Act requirements, which ends on August 29, 2008.

Mr. Wilkey encouraged all in attendance to visit EAC's Web site, pointing out that the information is both tremendous and up-to-date.

Questions and Answers:

In response to questions by the EAC Commissioners:

Mr. Wilkey reported that the letter from EAC to SysTest Labs regarding its communication with ES&S pertained to information that EAC did not feel was within the certification manual process, pointing out that Mr. Brian Hancock could brief the Commissioners further on this matter at a later point if they so desired.

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

The Commission agreed to table, until its September meeting, a final decision with respect to Chair Rodriguez's proposal to modify Advisory Opinion 07-003-A and Commissioner Hillman's proposed replacement Advisory Opinion 07-003-B, following the conference call that would be taking place the next morning with the Office of Management and Budget (OMB).

New Business

Consideration of Draft Policy for Notice and Public Comment

Commissioner Hillman presented the Commission with the "Proposed Notice and Public Comment Period," summarizing the process from when the policy was first presented to the Commission up through the present, pointing out that it will be very important to develop written procedures as soon as possible, so that staff is clear on how to implement the policy. Commissioner Hillman also noted that herself and Ms. Leek utilized the process for this policy as a test of the timelines that are imbedded in the policy to see the reality of what would need to be taken on and how long it would take.

Commissioner Hillman made a motion to adopt the Notice and Public Comment policy and that the policy be sent to the Federal Register for a 30-day notice and comment period. Vice-Chair Davidson seconded the motion. The floor was open for discussion at which time Maisha Leek presented an overview of the comments that were received during the first 30-day public comment period, along with the recommended action that

was proposed by staff. The comments that were considered centered around the policy in general, implementation of the policy and specific sections of the policy. Commissioner Hillman reviewed the changes that were made to the policy based upon the public comments. Following discussion of the motion, the Commission voted to adopt the Notice and Public Comment Policy. The motion carried unanimously.

Consideration of Draft Policy for Joint Partnership Task Force of EAC and State Election Officials Regarding Spending of HAVA Funds

Commissioner Hillman reported that due to time constraints she was unable to prepare the draft policy for a Joint Partnership Task Force of EAC and State election officials regarding the spending of HAVA funds, pointing out that the type of joint partnership task force that would work best for EAC is one that would include representatives of many different segments of stakeholders and not just State election officials.

Brief discussion was held concerning both the size of the working group and how it will meet, either in person or by conference calls, after which Commissioner Hillman pointed out she does envision the policy will limit the options as to how the task force can conduct business.

Chair Rodriguez concurred that while forming a task force is a timely matter, deferring the issue would be in the best interest of the States due to their being heavily involved in preparations for Election Day 2008.

Consideration of Proposed Administrative Regulations

General Counsel Hodgkins was pleased to present the Commission with the second of a three-part series of administrative regulations that were drafted based upon a commitment that the EAC made following a meeting with the House Administration Committee on August 2, 2007. The regulations cover document and witness production in civil litigation, standards of conduct and non-discrimination on the basis of handicap. The third and final set of regulations, which are anticipated will be ready for the September meeting, cover issues of non-discrimination in Federal financial assistance and will need to go through the Paperwork Reduction Act process, in addition to being posted in the Federal Register or EAC's Web site for a 30-day comment period. Ms. Hodgkins noted that while not required, it is the Commission's preference to post the regulations on its Web site for a 30-day public comment period. Comments will be received via the havainfo@eac.gov email box, via physical mail at 225 New York Avenue, N.W., Suite 1100, Washington, D.C. 20005 and via fax at 202-566-3128.

Ms. Hodgkins recommended that the Commission adopt for proposal the regulations as presented. Commissioner Hillman moved to adopt the second series of administrative regulations governing document of witness production in civil litigation, standards of conduct, and non-discrimination on the basis of handicap. Vice-Chair Davidson seconded the motion. The floor was open for discussion. Following a brief question and answer period, the Commission continued with the vote. The motion carried unanimously.

Research Department Work Plan Briefing

Present: Karen Lynn-Dyson, Director of Research, U.S. Election Assistance Commission

Ms. Lynn-Dyson was pleased to present the Commission with a portion of the Research Department's Work Plan for FY 2009 which outlined the process that will be utilized to study the following three HAVA-mandated research reports:

1. The feasibility and advisability of using Social Security numbers to establish voter registration.
2. The feasibility and advisability of the establishment of a program under which the Postal Service will waive or otherwise reduce the amount of postage applicable with respect to absentee ballots in general elections for Federal office.
3. Voting and administering elections in rural and urban areas.

Ms. Lynn-Dyson concluded her presentation by pointing out that in the coming weeks the Research Department staff would begin soliciting suggestions and recommendations with respect to the various approaches to these three topics.

Questions and Answers

In response to questions by the EAC Commissioners:

Ms. Lynn-Dyson reported that reduced postage will remain a topic of consideration by the Research Department, as recommended by EAC's Board of Advisors. Ms. Lynn-Dyson also pointed out the benefits that working groups will have with respect to the three aforementioned research reports, similar to the working groups that were used in helping to create the guidebooks for poll workers and also in the ballot design project. Based upon previous experience, Ms. Lynn-Dyson pointed out that the size of the working groups should be limited to 20 or less.

Mr. Wilkey also provided some brief positive comments on the success of utilizing working groups in compiling each chapter of the Election Management Guidelines.

Announcement of September 18, 2008, public meeting agenda items

Commissioner Hillman recommended that the September 18, 2008, agenda include the following topics: The Alternative Voting Method Study that is currently being commented on by the Board of Advisors on its virtual meeting room, an update on the Election Day Survey data to possibly include a representative from one of the five States that received a \$2 million Election Data Collection grant and a representative from a States that did not receive/apply for the grant, an update on the Notice and Public Comment policy with respect to comments received after the next posting in the Federal Register, and consideration of a draft policy for a Joint Partnership Task Force of EAC and State election officials regarding the spending of HAVA funds. Counsel Hodgkins noted that the proposed administrative regulations on the discrimination and financial assistance programs and consideration of the final administrative regulations on Freedom of Information Act, Government and Sunshine and Privacy Act would be ready for inclusion on the September agenda. The Commission agreed that due to the length of the agenda, September may require an all-day meeting.

Commissioners' Concluding Remarks

Vice-Chair Davidson reminded everyone who is intending to vote by absentee ballot of the steps they need to take to secure a ballot from their election official if they have not received one to date, emphasizing not to wait until the last day and possibly lose the right to cast a ballot.

Commissioner Hillman was pleased to report communication staff has informed her that they have been receiving quite a few hits on the poll worker section of the Web site, pointing out that EAC's efforts to promote this as a critical community service are beginning to be effective.

Meeting was recessed at 1:18 p.m.