

Minutes of the Public Meeting
United States Election Assistance Commission
1225 New York Avenue, NW
Washington, DC
October 26, 2006

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on October 26, 2006 at 1225 New York Avenue, NW, Suite 150, Washington, DC 20005. The meeting convened at 10:00 a.m. and adjourned at 4:30 p.m.

Public Meeting

Call to Order:

Chairman Paul DeGregorio called the meeting to order at 10:00 a.m.

Pledge of Allegiance:

Chairman DeGregorio led all present in a 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: Chairman Paul DeGregorio, Commissioner Gracia Hillman, and Commissioner Donetta Davidson

Senior Staff

Executive Director Tom Wilkey and General Counsel Juliet Hodgkins

Adoption of the Agenda:

Chairman DeGregorio asked for a motion to adopt the agenda. This was done with the change of adding an individual who requested time to speak during the public comment period. Commissioner Hillman moved to adopt with that change. Commissioner Davidson seconded the motion. The motion was carried unanimously.

Correction and Adoption of the Minutes from 9/21/06

Chairman DeGregorio asked for a motion to adopt the minutes of the previous meeting. Commissioner Hillman moved to adopt the agenda.

Commissioner Davidson seconded the motion. Minutes were adopted as corrected by Commissioner Hillman.

Report from the Executive Director:

Executive Director Tom Wilkey reported that there had been an excellent response to the four Quick Start guides covering ballot preparation, poll worker training, new voting systems and voting system security. He also introduced the newly released Voters Guide to Election Day and announced that it would be posted on the web. The best practices publication on provisional voting would be coming out shortly and will also be posted on our website.

Congress has mandated that EAC conduct a number of studies. The EAC recently awarded several contracts for studies on subjects such as first-time voters by mail, electronic voting, transmission of ballots and free-absentee ballot postage.

The EAC recently received a number of inquiries about one of its studies, voting fraud and voter intimidation. The premise of the work was two fold—to define the terms voter fraud and voter intimidation, and to make recommendations to the Commission on how we should proceed in future study of the subject.

The Office of the Inspector General has been busy as well. One of their primary responsibilities is in the area of auditing the funds that were distributed to the states. There are several audits that are being reviewed for recommendations to the Commissioners and several states which are in the process of being audited.

Commissioner Hillman asked Executive Director Wilkey if EAC was working on the translation of terms and could he provide an status report. Mr. Wilkey responded that EAC was in the process of translating information on the EAC website into Spanish and also developing a list of election terms. Other languages to be considered include the Asian languages as well as Japanese, Chinese, Tagalog, Vietnamese, and Korean.

Commissioner Hillman inquired about the voter fraud and intimidation report and asked if there had been many discussions and statements in the press. She also asked Mr. Wilkey to highlight the kind of inquiries EAC had received from the public and what EAC's response had been. Mr. Wilkey stated that there had been some confusion over a status report on the Voting Fraud and Voter Intimidation Study that was distributed at our May Board of Advisors and Standards Board meetings. That status report was produced by EAC staff and was not a final report on the issue. EAC staff is currently vetting the draft report to be presented to the Commissioners for adoption.

He went on to say that looking at the recommendations from the consultants had taken more time than was anticipated. EAC wanted to make sure that the

research on the voter fraud and intimidation was as complete and accurate as possible. When the final report comes out, EAC wants it to be properly vetted.

Commissioner Hillman stated that there had been some confusion about what people understood is a report. She asked General Counselor Hodgkins to clarify when a report is a report. Ms. Hodgkins stated that draft or pre-decisional documents are not considered final or releasable under the Freedom of Information Act. A document is final only when EAC has made a decision to adopt the report.

Resolution offered by Commissioner Hillman:

The unsung heroes of country are the people who volunteer to work as election judges, poll workers, Election Day workers and those who work in elections as a career. A proposal for a resolution is presented to create a "National Election Worker Appreciation Week". This would be a resolution to recognize the great diversity in this country and how that is reflected in the poll workers.

Commissioner Hillman moved to adopt the resolution. Motion was seconded by Commissioner Davidson. Motion passed unanimously. Resolution 2006-01, for the dates November 5-11, 2006 was adopted. The resolution was to be signed during the break with copies distributed to the public.

Presentations:

EAC's Voting System Testing and Certification Program

Presenter: Brian Hancock, US Election Assistance Commission

The testing and certification program manual was developed pursuant to Section 231 of the Help America Vote Act, which provides for the certification, decertification, recertification of hardware and software. The manual was developed in-house with the assistance of experts in conformity assessment programs. The individuals involved have over 50 years of combined experience with the development of these programs.

The quality monitoring program allows the EAC to gather information on anomalies or irregular functioning voting system. The program also allows EAC to inspect production sites and there is discussion about a process for unscheduled visits. All manufacturers must comply with the requirements of the manual as a condition of certification. Staff will brief commissioners on updates to the program manual and there will be ongoing education to election officials. This will be done via the website and stakeholder meetings.

The EAC is in the process of drafting of a lab accreditation manual. Under the HAVA requirements, potential EAC labs must first be accredited by the National Voluntary Accreditation Program (NVLAP) through NIST. As an additional security measure, labs must certify that there are no conflicts of interest. No lab or parent company or spouse or child can have a vested interest in the process of certification of that entity or system component.

Presenter: Gavin Gilmour, U.S. Election Assistance Commission

This program is the first time that the Federal government has been involved in the certification and testing of voting systems. Since 1990, the Federal government has been involved in the creation of standards for such testing, but it has not been involved in the testing of those systems to those standards. EAC will bring accountability and transparency to the program. The manual sets the requirements of the participants. Decertification is a tool that will help the EAC enforce the requirements.

The EAC will also use its resources to employ technical reviewers. These reviewers will review the work of the test labs. These experts will be subject to the same strict ethics statutes and regulations by which all Federal Government employees must abide.

Presenter: Mary Saunders, National Institute of Standards and Technology

The National Voluntary Laboratory Accreditation Program (NAVLAB) is operated by NIST but NAVLAB is responsible for the accreditation process. Participating labs are required to meet the established criteria in order to become accredited.

The labs are evaluated for competence under the Voting Systems Standards of 2002 and the Voluntary Voting Systems Guidelines of 2005. At that point, the labs must either correct any non-conformities found during the onsite assessment or submit a correction plan within the given time period. The corrections are reviewed by NVLAP and the evaluation panel determines whether the lab's responses are sufficient.

Only after the labs have completed the review can they submit their package to the EAC.

Commissioner Davidson asked the panelists for the background on why the EAC chose to continue allowing voting systems manufacturer's to select and pay for their accreditation lab tests? Mr. Hancock replied that

there are a number of reasons for that. First is that the EAC does not actually have legal authority to pursue some of the things that we would like to. The EAC is prohibited by law from collecting money from voting system manufacturers. The other reason is that most programs that the EAC looked at in other industries allow manufacturers to contact directly with the test labs. He gave examples like the FDA and FCC programs.

Commssioner Davidson then asked the panelists to explain the decertification portion of the program? Mr. Gilmour explained that a system can be decertified if it is shown not to meet the actual standards which it was originally tested to, if it was modified in some fashion outside of our program. And if the manufacturers just failed to follow some of the requirements of our procedural manual. Mr. Gilmour then went on to explain the steps of decertification. Starting with an informal inquiry. The next step is a formal investigation where investigators are assigned and a record is created. This is the phase where the manufacturer has an opportunity to be heard. If they can fix or explain the problem then this is their opportunity. If they can't there will be a decertification. There are also appeal rights for the manufacturers.

Commissioner Hillman then asked if the EAC does not get an invitation to field test, what set of data or information would the EAC be missing? Mr. Hancock responded that the program has numerous ways to collect data. First the manufacturers are required under the program to provide information to the EAC on any voting system failure that they encounter in a fielded voting system. The invitation system is designed to aid local election officials, in order to ensure that their rights and their procedures under state law are allowed.

Chairman DeGregorio asked Panel 1 about the cost of the EAC accreditation and certification program and each panelist agreed that it would be difficult in giving a precise dollar amount since it is the first federal program. Mr. Hancock stated that EAC is relying on information collected from other programs. Mr. Gilmour added that EAC was using some of the numbers from NASED to get a sense of volume and labor hours.

The Chairman asked Mr. Gilmour about the project timeline between the October public meeting and the next schedule meeting in December. Mr. Gilmour began with the public comment period and described the initial phase where proposed comments would be given to the Commissioners. Once the Commissioners made the final determination, the document would be published in the Federal Register. The effective date for the program is January 1, 2007.

The Chairman asked Mr. Hancock to give the highlights of the program. Mr. Hancock gave three points: (1) the program is the first time the Federal Government has instituted a process to monitor voting system manufacturers and testing laboratories; (2) EAC is providing accountability through a decertification program; (3) EAC policy on transparency of the testing certification process.

When questioned about the media stories surrounding hacking into voting systems, Mr. Hancock assured the Chairman that nothing had been reported on Election Day and reports from most studies had come from a laboratory environment. He went on to tell the Commissioners that the newly established program with the voting System Guidelines adopted in 2005 would address voting security concerns and restore America's confidence in voting.

(short recess)

Second Panel

Manufacturers and Testing Labs

Presenter: Ian Piper, Information Technology Association of America

ITAA members would like to raise issues regarding increasing testing frequency and repetition; developing new, economical testing practices; and certification for systems developed under a previous standard.

ITAA urges the EAC to augment federal test plans with testing of select state requirements. Mr. Piper also put forward that by combining the Federal level ITA certification testing and a few basic state level tests, the EAC would streamline the system certification process, save valuable time for election officials and reduce redundant, non-value added costs for everyone. ITAA asked the Commission to retain the pre-existing NASED voting system certification procedures.

Without additional federal funding, there may be a slow adoption of the 2005 VVSG since it will add additional costs to the states and vendors.

Presenter: Frank Padilla, Wyle Laboratories

Wyle Labs was established 57 years ago and is involved in the testing of different types of software/electronic components in different sectors. They do not approve or certify products, but do test systems to required standards. Under the EAC program, Wyle's accreditation as an

independent testing authority is limited to hardware and functional testing of voting machines.

Wyle makes it a priority to have no conflicts of interest. All employees meet strict ethics and conflict requirements. They are also bound by a policy of ethics with respect to their client. Wyle does not release test reports to anyone but the client. It is Wyle Laboratories' opinion that releasing this information may release proprietary information. However, Wyle is committed to work with the EAC within the established guidelines to help improve the process used to accredit voting machines.

Presenter: Brian Phillips, SysTest Labs

SysTest believes that the certification program will provide accountability and will open the process' transparency. The NASED program was managed by a very dedicated group of volunteers, but the manufacturers' responsibilities were sometimes vague. The responsibility to create more definition of what the NASED committee required was left to the labs.

The lab felt that it was being misrepresented. The test lab is not, nor has it been, the testing and quality assurance organization for the manufacturer. It is the lab's responsibility to test products for compliance to standards. The guidelines and testing certification program will help define and clarify the lab's role.

EAC Commissioners questioned Mr. Phillips on the standards prepared and adopted by the Federal Election Commission. Mr. Phillips responded that the 2002 standards were open for public comment. The public comments were reviewed, and feedback was given to the appropriate committees.

Commissioner Hillman asked if there was an absence of information discovered in the testing of voting equipment, which was not covered in the standards. Mr. Phillips stated that at times a lack of information or interpretation was discovered, and was reported to the NASED technical committee.

When asked about the meaning of state petitions to audit federal test plans, Mr. Piper explained that state petitions will allow the states to compare their own test to the federal certification standards. The results will allow the states to go to the EAC with their comments regarding additional requirements.

Ms. Hodgkins asked for examples of programs tested by other Federal Government agencies. Mr. Padilla stated that Wyle Laboratories test for FAA and FCC standards, military and NASA specifications, along with thousands of test for hundreds of customers. Mr. Phillips responded that SysTest Laboratories is doing testing for FDA-regulated industries.

Third panel

Election Officials

Presenter: Ann McGeehan, Director of Elections, Office of the Secretary of State, TX

The testing certification manual is extremely well written and represents a huge step forward. It acknowledges that voting systems don't operate by themselves, but rather in a much larger framework in the context of federal and state laws and procedures. The manual looks at the state and local roles in accepting, testing and maintaining electronic voting systems. The program must also serve the voter so that they have trust in the system.

With regards to emergency certification, Ms. McGeehan suggests that the state **MUST** be involved in going to the government if this is an issue.

Regarding the section on the formal investigation—it might be helpful to include that the EAC could come back and do a whole new set of tests. It would also help the states, when the EAC does a formal investigation, if the states have more time to remedy the issue before the next federal election.

Presenter: Sandy Steinbach, Director of Elections, Office of the Secretary of State of Iowa

The NASED voting program operated for many years with limited resources. Now that there is a budget and dedicated staff, it should be much more helpful since the NASED program was not very well funded.

Ms. Steinbach suggested that the EAC facilitate the update of vendor systems into the new program as soon as possible so it gives the states more time to get an upgrade or system into place. In the last election, some of the states found themselves waiting a long period for certification and were concerned that they would not receive a NASED number in time for the election.

The state will sometimes have some administrative changes with this new program as well. For example, Iowa will actually have to change its law to recognize the EAC program, since it is currently on the books to recognize NASED.

Presenter: Alice Miller, District of Columbia Board of Elections and Ethics

NASED's administration of the voluntary voting systems standards was limited by the lack of resources and infrastructure. This manual levels the playing field for all the vendors. If they do not comply, they will risk decertification. The guidelines will raise the bar for vetting systems' performance.

The fact that the information collected during the certification process will be housed and controlled by a single agency offers an enormous benefit. This lends greater accessibility to the information when questions arise about the performance or quality of a given voting system.

EAC Commissioners asked Panel 3, based on the equipment utilized within their state, if they expect software and hardware changes. Changes will force the states to come before the EAC certification program for recertification. Ms. Steinbach stated that Iowa schedule an examination for their systems three times a year. Currently, Iowa's legislation requires voting equipment be qualified under NASED testing program. Ms. Miller stated that DC legislation should be changed to recognize EAC certification program.

Commissioner Davidson asked what steps the states are taking to make sure that the voting equipment is as secure as possible on Election Day. Ms. McGeehan responded that Texas issued a detailed directory on security and testing. In addition to post-testing, there is a serious of manual counting and records retention. Comprehensive advise is posted on the Texas website. Ms. Steinbach explained that the post-testing in Iowa consisted of comprehensive pre-election and test protocols for each county.

Ms. Miller responded that Washington D.C. as a little different than the states because Washington has the local responsibility as well as the state responsibilities. She stated that they monitored all testing quite closely. When they send their machines on they've done all the checks to make sure that everything is in place to guarantee the integrity of the process.

Commissioner Davidson then asked if the panelists opened the accuracy testing to the public.

Ms. McGheehan responded that it is open to the public and they publish notice 72 hours before the testing. The other panelists said they had similar systems in place.

Commissioner Hillman then asked each panelist who they find themselves most frequently discussing testing and certification of voting systems with?

Ms. McGeehan then responded that she mostly speaks with local election officials because of the complexity of the process and the potential problems. The other panelists concurred, with Ms. Steinbach adding that several advocacy groups also contact her to talk about testing and certification.

Executive Director Wilkey then asked if it's possible for states, and legislators, to require local jurisdictions to report information regarding problems with machines and testing, so that real information about these problems is available?

Ms. Steinbach replied that in theory of course that can work. The problem arises with number of people involved in the election process. The process is run by thousands of election officials who are going to be reluctant to report problems about their own jurisdictions. In order for a process like that to work we must be able to assure local officials that they reporting of the problems won't be used against in them in a political manner, but will simply be used to help voters.

The other panelists offered similar answers.

Fourth Panel

State Certification Specialist/Advocacy Organization

Presenter: Michael Shamos, Carnegie Mellon University

In June 2004 testimony before the House of Representatives Committee on Science Mr. Shamos offered the opinion that "The system we have for testing and certifying voting equipment in this country is not only broken, but is virtually nonexistent. It must be recreated from scratch or we will never restore public confidence in elections". The process needs to be scrapped and built from the bottom up.

The purpose of Federal government testing is to relieve the burden on states. When the states disband their own testing procedures and place reliance on the

Federal laboratories it will create a profound obligation on the labs to conduct testing in a way that can be fully trusted by the states and voters. Right now we cannot rely on the ITA process.

The fundamental flaw with the federal testing the VVSG is the lack of transparency. The labs are paid by manufacturers seeking certification and they answer to the manufacturers. The labs have no defined duty to the public and to the states that rely on their certification. It is Mr. Shamos' opinion that the manual is too solicitous of the supposed trade secrets of the manufacturers. As long as the code remains secret, the public will never trust it. He urges the overall redesign of the architecture of the system as a whole.

Chairman DeGregorio questioned Mr. Shamos on his characterization of federal testing. Using Pennsylvania as an example, Mr. Shamos responded that federal testing is when a state satisfies the Federal Election Commission (FEC) standards as tested by NASED. He acknowledged that NASED was not a federal agency.

Commissioner Hillman asked for specific details regarding Mr. Shamos's statement regarding the 50 per cent pass rate for federally qualified voting systems. Mr. Shamos stated that in 50 percent of the cases, voting systems would "not pass muster under Pennsylvania law." He did not want to give details, without consulting his examination reports, and he did not want to reveal the names of vendors.

When asked about the transparency of his voting system examination process for the state of Pennsylvania, Mr. Shamos acknowledged that every aspect of his process is open to the public scrutiny. However, he went on to state that during public examination the source code is looked at privately but is not made public.

Presenter: Warren Stewart, Vote Trust

Vote Trust is a non partisan advocacy group that encourages more transparency and the removal of software secrecy by making software disclosure an option in states. One of the main issues of distrust that voters have is the inability to see how the software and hardware records and tallies votes.

Mr. Stewart believes that the source code should be public in order to increase the chance to improve the software. The draft manual lacks enforcement authority and there is a need for more penalty clauses.

States and local election groups are eager to work together to support the EAC in establishing a transparent and reliable election process that deserves the full confidence of American voters.

Chairman DeGregorio asked Mr. Stewart for his recommendations to state and local election officials to encourage greater transparency. Mr. Stewart thought that having as much voting information on election officials' websites would assist in answering voters' questions and increasing the transparency of the voting process. Mr. Shamos agreed.

Comments during the public comment section:

Presenter: Nancy Wallace, a volunteer from verifiedvoting.org.

Ms. Wallace works for Computer Scientists Corp, CSC, as a supervisor of a team of three software testers and is a volunteer for verifiedvoting.org. She has a particular interest in this topic because of her profession.

A goal of this program is to increase public confidence. This is an important goal and given the current crisis in our voting systems it is an admirable goal. Public confidence can only be increased by making the process as transparent to the public as possible. The public must have access to the relevant information in order to increase public confidence.

Unfortunately, the specific provisions in the draft manual fail to provide the proper amount of transparency. Instead they limit public participation. The program favors the manufacturers and does not give the public the access they deserve. As a result the program remains a mostly private discussion between the manufacturers, the testing labs, and the EAC.

Quality assurance must define the program. The voter has no way of knowing what tests are being run or the results of these tests. This is the kind of quality assurance that must define the program.

The meeting adjourned at 4:30 PM.