

United States Election Assistance Commission

Meeting Minutes – August 10, 2004

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Tuesday, August 10, 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 10:04a.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 Raymundo Martinez.
- Adoption of Agenda:** Chairman Soaries recognized Commissioner DeGregorio who moved to adopt the agenda for the meeting of August 10, 2004. The motion was seconded by Commissioner Martinez, 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 July 13, 2004. The motion was seconded by Vice-Chair Hillman, and the motion carried unanimously.
- Commissioner Remarks:** Chairman Soaries recognized each of the Commissioners for brief opening remarks.
- Commissioner DeGregorio stated that it had been a very busy and interesting four weeks since the last EAC meeting, and that he will be pleased later to be able to report progress in a number of program areas.
- Commissioner Martinez remarked that during the past four weeks the EAC had undertaken significant outreach efforts through travel and discussions with election officials and various groups. Commissioner Martinez also stated that the EAC would continue to actively engage in establishing partnerships through a commitment to inclusive outreach efforts and that the success of the EAC will be judged by the partnerships it makes.

Vice-Chair Hillman, reflecting on the previous remarks, noted that we are at 85 days and counting until election day on November 2, 2004. The Vice-Chair stated that the work we have done to this point will steer us in the right direction for those remaining 85 days and that the regular schedule of meetings provides an excellent opportunity for EAC to receive valuable information from our partners in the field of election administration.

Chairman Soaries concluded the Commissioner remarks by stating that since the last EAC meeting he had visited Vienna, Austria and experienced another level of EAC responsibilities which reinforced the global significance of U.S. democracy. The Chairman noted that pursuant to this role, EAC will actively engage in connecting with and briefing the numerous foreign officials observing the U.S. elections in November.

Updates and Reports:

Chairman Soaries recognized EAC staff member Margaret “Peggy” Sims to report on the progress of the EAC requirements payments to States. Ms. Sims stated that since the July 13, 2004 EAC meeting, requirements payments had been disbursed to seven more States, raising the total disbursements to States to over \$1 billion. 36 States have received requirements payments for fiscal year 2003 totaling almost \$580 million, with 21 of those States also receiving fiscal year 2004 payments totaling over \$470 million.

Ms. Sims also noted that less than \$1.3 billion remains available to be paid to States once they certify that they are eligible for the funds in accordance with HAVA section 253. Of the remaining States, EAC is processing seven State certifications, 5 States have been contacted requesting various required information, and several others can’t certify at this time because the State has not appropriated the 5% matching payment as required by HAVA.

Chairman Soaries thanked Ms. Sims for her efforts in processing the requirements payments and forwarded regards from election officials he spoke with in San Antonio, Texas.

Commissioner DeGregorio noted that he had recently reported on EAC activities at the National Association of State Election Directors (NASED) Meeting in Portland, Oregon, and that the State election directors unanimously appreciated the hard work and professionalism shown by Ms. Sims.

Vice-Chair Hillman asked Ms. Sims if it was true that 11 States still needed to file 2004 State Plans to be published by EAC.

Ms. Sims replied that the figure was correct.

The Vice-Chair asked Ms. Sims how many States can't receive requirements payments because they have not appropriated the 5% State match.

Ms. Sims replied that she was not sure, but would check on that number.

Vice-Chair Hillman next asked Ms. Sims if any State had not received their fiscal year 2003 funds.

Ms. Sims replied that the Virgin Islands had not received 2003 funds.

Commissioner Martinez interjected that the EAC attorney was working with officials in the Virgin Islands to address this issue.

Chairman Soaries asked Ms. Sims how the States were spending their requirements payments.

Ms. Sims replied that she was not sure and that EAC would not know the answer to this question until it received reports from the States in March of 2005.

Commissioner Martinez remarked that we should remember the historic nature of these funds as being the first time in our nations history that the Federal government disbursed funds to assist State and local governments in the administration of elections.

Chairman Soaries next recognized Commissioner DeGregorio to give an update on work being conducted with the Federal Voting Assistance Program (FVAP).

Commissioner DeGregorio stated that EAC was charged with issuing a report on best practices for Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters and that EAC was working closely with FVAP on this project. Commissioner DeGregorio noted that the draft report was currently being reviewed by the EAC Standards Board and Board of Advisors, with comments due by Friday, August 13, 2004.

Commissioner DeGregorio gave some examples of practices which will be recommended in the report, including each State designating a UOCAVA point of contact at the State level as required by law, each local election official also designate an official UOCAVA contact person to facilitate services for these voters, and encouraging the use of email to transfer ballots in a timely manner.

Chairman Soaries thanked Commissioner DeGregorio for his update and noted that over 6 million citizens are affected by the UOCAVA law and that FVAP reports greater interest in registration and voting this year than has been see in the recent past from this group.

Chairman Soaries next recognized Vice-Chair Hillman to give an update on the data collection and election research project initiated at the last EAC meeting.

Vice-Chair Hillman stated that EAC has received input from several sources on the kinds of data to collect and that these discussions have made it evident that EAC will also need to collect information on election administration practices so it can inform Congress and otherwise respond to questions about HAVA and its impact on the November election.

The Vice-Chair stated that unfortunately, the scope of the data we need to collect exceeds EAC fiscal and human resources.

As a result, EAC would need to scale back its original plans for data collection. Vice-Chair Hillman asked her colleagues to think about what information is absolutely critical for EAC to obtain from the November election. The Vice Chair concluded by saying that election officials do see a benefit in participating in this project and that she expects good cooperation.

Chairman Soaries stated that at the July 13, 2004 EAC meeting, he had emphasized the need to recruit more poll workers, and that EAC had scheduled a meeting in Atlanta, Georgia on September 13, 2004 to discuss this issue in detail. The Chairman remarked that unfortunately, EAC fiscal restraints now prohibit us from traveling to Atlanta for this meeting, and that he now proposed the meeting be held here at the EAC offices on the same date and that much of the meeting focus on the poll worker issue. The Chairman noted that September 13, 2004 will still not be too late to focus on this important issue and highlight the need of local election officials to recruit more poll workers.

Vice-Chair Hillman remarked that it was indeed unfortunate that EAC could not go to Atlanta, Georgia to hold the meeting, but that she was appreciative of everyone's cooperation and flexibility to change plans so that EAC is able to be fiscally responsible while meeting its requirements under HAVA.

Commissioner DeGregorio added that he too felt that it was unfortunate that EAC does not currently have the funds to do a good public education campaign throughout the country to help recruit poll workers. Commissioner DeGregorio also stated that in recent meetings in San Antonio, Texas with local election officials, and in Portland, Oregon with State election officials, both groups cite a serious shortage of poll workers and urged the EAC to do anything it can on a national level to bring attention to this problem.

Chairman Soaries remarked that on this issue, the media is our friend and helps us spread the word regarding the need for more poll workers. The Chairman also stated that one challenge is to let people know that on election day we need non-partisan poll officials to do the work.

Commissioner Martinez agreed with the Chairman and noted that there is also a critical need for bilingual poll workers and interpreters and that the EAC would continue to focus on this issue. Chairman Soaries noted that section 241 of HAVA speaks to the need for EAC to create products such as our "Best Practices" report. The Chairman also noted that at the last meeting the EAC made a commitment to complete work on the Best Practices Tool Kit and that he was now happy to congratulate Commissioner DeGregorio and Commissioner Martinez for the fine work they did with the project team and volunteers to create this product. The Chairman next turned the floor over to Commissioner DeGregorio to discuss the highlights of the report.

Commissioner Martinez interjected that he appreciated sharing the praise, but that the project had been led by the experience of Commissioner DeGregorio who truly deserves credit for this fine product.

Commissioner DeGregorio thanked Commissioner Martinez for the kind words and remarked that while experienced helped to craft the document, there were many contributors. Commissioner

DeGregorio stated that the final document contained 63 pages and links to thousands of other pages of information and best practices and went live on the EAC web site at 8:00am August 9, 2004. Commissioner DeGregorio went on to state that the document was sent to the Secretaries of State, and state election directors, and that a link to the document was forwarded to thousands of local election officials. In addition the Commissioner noted that a notification of the documents availability was sent to advocacy groups, the press, other major stakeholders, and Congressional offices.

Commissioner DeGregorio next reviewed the document from the EAC web site at www.eac.gov. The Commissioner noted that the first screen of the document is a cover page which explains the document, how it was developed and how to send feedback to the EAC. The Commissioner demonstrated that clicking the bottom of the document takes an individual directly to the Tool Kit containing much information on shared practices and administration management for all election systems as well as an area for individual voting systems to get ideas in shared practices using those specific systems. Commissioner DeGregorio also highlighted the section on best practices in administering provisional voting containing numerous helpful documents including a check list for election officials to make sure that they are in compliance with the provisional voting requirements of HAVA. The Commissioner next demonstrated one of the numerous links in the document going to a check list developed by Prince William County, Virginia for their election staff. Commissioner DeGregorio stated that the EAC believes that this tool kit is going to be helpful to election officials across the country since it includes examples from very small jurisdictions as well as from Los Angeles County, California. Finally, Commissioner DeGregorio noted that the document was a work in progress and after the November election EAC would probably do another assessment of what election officials learned from the election to include in a second volume of this document to be available sometime next year.

Chairman Soaries again thanked Commissioner DeGregorio for his hands-on work for this project and asked if election officials would accept this guidance from the EAC.

Commissioner DeGregorio stated that it was unknown whether 7,700 local election officials would look at the document and use some of the recommended practices. The Commissioner noted that in Portland, Oregon, he had encouraged NASED members to relay

to their local election officials that details matter. The Commissioner used an example from a recent primary election in his home state of Missouri, in which there were reports of four different election glitches from four different counties, including a candidates name being left off the ballot and 800 ballots being temporarily lost and not counted on election night. He noted that this document will help election officials avoid many of these glitches.

Commissioner Martinez stated that he assumed that the document was not exclusively intended for election administrators.

Commissioner DeGregorio stated that this was correct and that the document was also intended to assist other stakeholders such as advocacy groups for the disabled, for language minority voters and can be useful to anyone in the process of encouraging people to participate in the November election.

Vice-Chair Hillman asked if it was correct that if an advocacy group or anyone else had a comment or suggestion for the document, they were able to respond to the EAC.

Commissioner DeGregorio stated that the EAC encouraged feedback and that individuals could respond or comment by email to HAVAtoolkit@eac.gov.

Recommendations:

Chairman Soaries stated that there were two recommendations to be discussed pursuant to the EAC role both as a national clearinghouse and the agency responsible for the national mail voter registration form. Chairman Soaries recognized EAC attorney John Vergelli, on detail from the Federal Election Commission to discuss the recommendation on the national form.

Mr. Vergelli first noted the national form is mandated by the National Voter Registration Act (NVRA) and because registration laws vary from state to state, each state must submit to the EAC whatever state specific instructions are necessary to for applicants using the form in a particular state. Mr. Vergelli also noted that one of the specific requirements of HAVA is for states to collect certain identifying information from the applicant at the time of registration, or in some instances, to assign the individual a unique identifier, and that this requirement was part of the larger HAVA requirement that states implement a single, uniform, official, centralized, computerized statewide voter registration list.

Mr. Vergelli stated that HAVA allows states to seek a waiver of these requirements until January 1, 2006, and that forty-four states including the District of Columbia (of the 55 total jurisdictions) had obtained a waiver.

Mr. Vergelli remarked that if adopted, the draft policy statement (Agenda Document 04-05) would address how the EAC intends to exercise its discretion in administering the national form on this specific issue. Mr. Vergelli defined a policy statement as a recognized type of administrative procedure which allows an agency to apply their intentions for the future without binding themselves while at the same time informing the public as the agency structures the exercise of its discretion.

Mr. Vergelli stated that the purpose of this particular policy statement, if adopted, was to make sure that the EAC understands that the waiver provision in section 303(d)(1)(b) extends to all of the provisions of section 303 including the requirements of paragraph (a)(5) requiring states to collect certain identifying information from the applicant at the time of registration.

Chairman Soaries thanked Mr. Vergelli for his presentation and all his hard work and asked him when and how states applied for the waiver and if that action pre-dated the establishment of the EAC.

Mr. Vergelli stated that he did not remember the specific date, but that the waivers were accepted and processed by the Federal Election Commission, which did have limited responsibilities under HAVA.

Chairman Soaries next asked if the waiver was specifically for the creation of the database and not for all of HAVA.

Mr. Vergelli stated that it was clear that the waiver only applies to subsection A of section 303 of HAVA.

Vice-Chair Hillman asked Mr. Vergelli if this waiver was separate from the waiver that a state could have requested regarding the replacement of voting equipment.

Mr. Vergelli stated that this was correct.

Commissioner Martinez clarified the issue by noting that when a state took a waiver of the requirements regarding the statewide, computerized, interactive statewide voter registration database, they were also taking a waiver of the requirements contained in section 303(a) of HAVA.

Mr. Vergelli stated that this was correct.

Commissioner DeGregorio asked Mr. Vergelli if he had any discussions with the Department of Justice (DOJ) regarding the section 303(a).

Mr. Vergelli responded that he had spoken with Hans von Spakovsky at DOJ and that they did not disagree with the substance of his analysis.

Commissioner DeGregorio next asked if there was anything in the policy statement that would prohibit states from following their own rules and procedures regarding their own registration forms.

Mr. Vergelli replied that no, there was nothing prohibitive in the policy statement.

Vice-Chair Hillman asked when the policy statement would take effect.

Mr. Vergelli replied that the policy statement was effective immediately upon publication in the *Federal Register*.

Vice-Chair Hillman asked Mr. Vergelli about the status of the remaining 11 states not covered by the waiver.

Mr. Vergelli answered that it was actually seven states since, unlike HAVA, NVRA only covered the 50 States and the District of Columbia. Vergelli went on to state that six of the seven were in a special category like North Dakota, for example, which has same day voter registration, and that South Dakota was in a unique situation in that their process conforms with DOJ directives even though their state instructions don't necessarily reflect that.

Chairman Soaries next asked for a motion to adopt the policy statement.

Commissioner DeGregorio moved to adopt the policy statement, agenda item 04-05. Commissioner Martinez seconded the motion.

Chairman Soaries asked if there were any further questions or concerns and recognized Commissioner Martinez who requested to read a statement for the record.

Commissioner Martinez stated that Congress enacted the National Voter Registration Act in 1993 to enhance voting opportunities for all Americans and that since its enactment NVRA has brought many new voices into the political process by making it easier to exercise their right to vote. Commissioner Martinez also pointed out that the national mail voter registration form required by NVRA is used not just by individuals, but by numerous non-partisan organizations to conduct voter registration drives. Commissioner Martinez stated that it was important that the EAC work closely with state and local election officials to make sure no confusion exists about the form and that today's action was a significant step toward insuring that the form accurately reflects existing Federal law and state statutes.

Commissioner DeGregorio noted that the HAVA requirement for the statewide voter registration database will help clean up the voting roles so that fewer people would be challenged at the polling place, fewer individuals would be required to vote a provisional ballot and fewer potential voters would be embarrassed because their name was not on the voter roles or because they did not have the correct information.

Vice-Chair Hillman asked if while the action being taken today provides immediate clarification, will EAC still need to consider this issue beyond November.

Mr. Vergelli stated that yes, the policy statement clarifies the situation in the states that have the waivers while the waivers are in effect.

Commissioner Martinez next asked Mr. Vergelli if the policy statement was adopted, could states that have taken the waiver still communicate with the EAC and give us guidance on whether their state specific instructions accurately reflect the current requirements of the state.

Mr. Vergelli replied that yes, states could communicate with the EAC as they have always been able to do.

Chairman Soaries noted that the motion on the table seems to strike the best the best balance, respects HAVA and helps election officials get through November with one less complication. The Chairman stated that he was prepared to vote on and support the policy statement.

Commissioner Martinez added a final comment that the EAC was not only committed to updating the form as changes were identified, but also to translating the form into Spanish and making it available for voters or individuals not proficient in English.

Chairman Soaries called for a vote on the motion to adopt the policy statement, and the motion passed unanimously.

Chairman Soaries stated that the final item on the agenda was the Help America Vote College Program and recognized Commissioner Martinez who is leading the EAC effort to implement this program.

Commissioner Martinez thanked the Chairman and noted that a University of Maryland study estimated that participation by voters under the age of 25 has continued to decline since the 1971 passage of the 26th Amendment, granting 18 year-olds the right to vote. Commissioner Martinez stated that with these lower participation rates, it is the job of the EAC to introduce the process of election administration to college students and that the EAC hoped to inform students of the need for active involvement in the civic process through the Help America Vote College Program's activities to recruit young poll workers.

Commissioner Martinez stated that during the coming months the EAC will help build partnerships among various organizations dedicated to insuring the success of this program.

Commissioner Martinez next recommended that the EAC, through the Help America Vote College Program, encourage students to enroll at institutions of higher education, to assist state and local governments in the administration of elections by serving as nonpartisan poll workers and assistants, and to encourage state and local governments to use the services of students participating in the program. Commissioner Martinez also recommended that the EAC, in consultation with chief state election officials, develop materials, sponsor seminars and workshops advising and targeting students to meet the purposes of the program. Commissioner Martinez next recommended that the EAC ensure that any funds granted under this program be spent on projects and activities without partisan bias or promoting any particular point of view. Finally, Commissioner Martinez recommended that the EAC encourage all institutions of higher learning and state and local election officials to participate in this program.

Commissioner DeGregorio complimented Commissioner Martinez on his work in developing the program and asked how much Congress had appropriated for this program.

Commissioner Martinez replied that \$750,000 was appropriated for this fiscal year less a bit taken in the rescission.

Commissioner DeGregorio noted that this is a very worthwhile program and that with the increasing complexities of election administration, the addition of college students would be beneficial to the process throughout the country.

Vice-Chair Hillman noted that EAC efforts this year would focus on utilizing students when and where state law permits as opposed to attempting to change current state law and policy.

Commissioner Martinez replied that this was correct, and that the program must take into account various state laws requiring, for example, that individuals be registered to vote in a jurisdiction before being allowed to work at the polls. Commissioner Martinez noted that perhaps students with other skills could be used as assistant interpreters, for example, and other such duties.

Chairman Soaries asked for a motion to adopt the recommendation on the Help America Vote College Program.

Vice-Chair Hillman motioned to adopt the recommendation, Commissioner DeGregorio seconded the motion, and the motion carried unanimously.

Chairman Soaries next announced that Ms. Joan Wooley, an EAC staffer on detail from EPA would take over as the full-time coordinator of the national poll worker initiative and would coordinate with the college program.

Chairman Soaries next thanked the EAC staff and the other Commissioners on their hard work and integrity over the past months.

Adjournment:

Chairman Soaries asked for a motion to adjourn the meeting. Commissioner Martinez moved to adjourn the meeting; Commissioner DeGregorio seconded the motion, and the motion passed unanimously. The meeting adjourned at 11:24 p.m.