

United States Election Assistance Commission

Meeting Minutes – July 13, 2004

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Tuesday, July 13, 2004 at 1:00 p.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 1:06 p.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 Vice-Chair Hillman who moved to adopt the agenda for the meeting of July 13, 2004. The motion was seconded by Commissioner Martinez, and the motion carried unanimously.
- Adoption of Minutes:** Chairman Soaries recognized Vice-Chair Hillman who moved that EAC adopt the Minutes of the Commission Meeting held March 23, 2004. The motion was seconded by Commissioner DeGregorio, and the motion carried unanimously.
- Commissioner Remarks:** Chairman Soaries began with a statement concerning the status of the November Presidential election. Chairman Soaries noted that there are no circumstances that could justify the postponement or cancellation of a Presidential election in the United States and that through wars and other challenging occurrences, American has persisted in protecting the ability of our people to express their will by electing a government reflective of that will. Chairman Soaries continued by stating that there is no threat nor is there any occurrence that would cause him to conclude or recommend that the November 2 federal election be postponed, delayed cancelled or redefined in any manner.
- Chairman Soaries next recognized Vice-Chair Hillman. Vice-Chair Hillman stated that it had been an incredible six months and that the EAC had made significant progress in a number of areas in spite of budgetary and other difficulties. The Vice-Chair stated that she appreciated the Chairman's remarks on leadership and that she would have further comments later in the agenda.

Chairman Soaries next recognized Commissioner DeGregorio. Commissioner DeGregorio echoed Vice-Chair Hillman's remarks and said that it indeed had been an exciting and busy six months. Commissioner DeGregorio stated that later in the agenda he would report on some of the events that he has been involved with over that period of time. The Commissioner stated that many of the projects that he has been involved with were focused on putting the "A" in EAC by assisting state and local election officials, particularly with the Best Practices Tool Kit. Commissioner DeGregorio concluded by saying that it was an honor to serve with the other Commissioners and that it has been the most rewarding professional experience of his career.

Chairman Soaries next recognized Commissioner Martinez. Commissioner Martinez began his remarks by stating that he also appreciated all the work done over the past several months by the Chairman and his other colleagues. Commissioner Martinez noted that until the passage of the Help America Vote Act (HAVA), the federal government and little active involvement in the election administration process, but now has significant requirements and significant funding and that the federal role is now one of an active engaged partner with state and local election officials. Commissioner Martinez noted that the EAC had numerous mandates including the development of voluntary voting system guidelines, studies on various aspects of election administration, and the distribution of guidance to state and local officials. The Commissioner went on to state that although the EAC clearly had many important functions, one of the greatest needs was to address problems with the people side of election administration. Foremost among these problems were the need to improve poll worker training, to address the lack of bilingual poll workers, and the need to conduct non-partisan voter registration activities. Commissioner Martinez concluded by stating that election reform consists of three components, technology, process and people and that he looks forward to working in these areas to improve election administration.

**Updates and Reports:
EAC Administration-**

Chairman Soaries introduced EAC Consulting Chief of Staff Diane Savoy, who reported on EAC operations. Ms. Savoy stated that since the last public meeting held on March 23, 2004, the EAC has moved into its new office space with the assistance of a FY 04 rent waiver granted by the General Services Administration (GSA). Ms. Savoy also stated that the EAC continued the phased hiring of permanent staff which now totals 13 individuals with

plans to add 3-4 more before the end of the fiscal year. Ms. Savoy reported that the EAC was in the process of interviewing candidates for the position of General Counsel and that the position would be filled in August. Ms. Savoy noted that the EAC would soon appoint an interim Executive Director who would hold that position for 6 months or until the EAC Standards Board and Board of Advisors completed their work to recommend candidates to the EAC Commissioners for permanent Executive Director as required by HAVA. Finally, Ms. Savoy reported that the EAC had submitted an amended FY 05 budget justification requesting \$10 million for operations and \$10 million for research.

Chairman Soaries thanked Ms. Savoy for her report and for all the outstanding work she has done since joining the EAC.

Title II Requirements Payments-

Chairman Soaries stated that none of the EAC's tasks this year has been more critical than the task of distributing the requirements payments to the states. The Chairman recognized Commissioner Martinez to discuss the distribution of these funds.

Commissioner Martinez introduced Margaret "Peggy" Sims of the EAC staff to report on Commission activities in this area. Ms Sims stated that Section 251 of HAVA requires the EAC to distribute funds to the states in fiscal years 2003, 2004 and 2005 to assist in improving the administration of elections for federal office. Ms. Sims noted that to date Congress had appropriated over \$2.3 billion, with \$830 million marked for distribution in FY 03 and \$1.4 billion in FY 04. Ms. Sims noted that FY 03 monies were not distributed in that year due to the absence of the EAC. Ms. Sims stated that as a condition to receiving these payments, states had to meet certain conditions. One of these conditions is to have filed a state plan with the EAC covering the fiscal year in which payments are sought. With the help of GSA, the EAC published the first of these plans from all 55 states and territories in the Federal Register on March 24, 2004. Section 253 of HAVA required states to wait until the plans had been published for 45 days before submitting their certification for the requirements payments. The first state certifications were received by the EAC on May 11, 2004. Ms. Sims noted that it took several weeks for the EAC to exercise its due diligence to determine the federal financial and reporting requirements that applied to the requirements payments, after which the EAC approved the release of requirements payments totaling over \$628 million to the first 21 states on June 10, 2004. Ms Sims concluded by saying that since

the first payment, the EAC, through GSA, has processed requirements payments for nine more states bringing the total to 30 states receiving over \$520 million in FY 03 payments and 18 states receiving over \$398 million in FY 04 payments.

Commissioner DeGregorio commended Commissioner Martinez and Ms. Sims on the careful and detailed work that they have done to make these requirements payments possible.

Vice-Chair Hillman asked if any states beyond the 30 had submitted their self certifications to the EAC. Ms. Sims responded that there was one state pending and that several other states had indicated that they were about to submit their certifications.

Chairman Soaries asked Ms. Sims to summarize the process used to verify and disburse the requirements payments. Ms. Sims stated that when a state certification is received, the first step was to check to make sure that the state has met the requirements listed in HAVA. Once a determination is made that a state has indeed met all the statutory requirements, a report on the state is presented to Commissioners DeGregorio and Martinez. If no problems are found, a recommendation is made to the whole Commission who use a 48 hour tally vote method to approve the payment and to notify GSA to disburse the requirements payments.

**Report on May 5, 2004
Public Hearing-**

Chairman Soaries recalled that at its March 23, 2004 public meeting, the EAC announced that within 45 days it would hold a public hearing on voting systems. The Chairman noted that the hearing was held on May 5, 2004, and then recognized EAC contractor Tracey Warren to give a summary of her work related to the May 5, 2004 hearing.

Ms. Warren stated that a draft report summarizing the May 5, 2004 hearing was recently submitted to the EAC and was under review. Ms. Warren noted that the report included not only the verbal testimony of the panel members invited to the hearing, but also a significant amount of written testimony sent to the EAC via regular mail and via email. Ms. Warren stated that the final report on the hearing would show that the hearing served as a neutral forum for the debate on the security of electronic voting systems. Ms. Warren also noted that the testimony included in the report provided both short term and long term recommendations on improving the security of electronic voting, and that many of the short term solutions had been incorporated into the Best Practices Tool Kit to be discussed later on the agenda.

Standards Board and Board of Advisors-

The Chairman noted that Vice-Chair Hillman had worked extremely hard over the last six months organizing the EAC Board of Advisors and Standards Board, and that the Commission thanked her for this important work. Chairman Soaries then recognized Vice-Chair Hillman to give a summary of the activities of the Standards Board and Board of Advisors.

Vice-Chair Hillman began her comments by thanking the other Commissioners and the EAC staff who had assisted her in working with the advisory boards. Vice-Chair Hillman noted that as of today, there was still one vacancy for Guam on the Standards Board, which might not be filled given the structure of elections in Guam which are centralized within one office. The Vice-Chair also noted six vacancies on the Board of Advisors, as follows two representatives of the National Governors Association, two representatives of the U.S. Commission on Civil Rights, and two representatives of the U.S. Conference of Mayors. Vice-Chair Hillman stated that each of these organizations had been contacted and made aware of their responsibilities under HAVA, and that she hoped that names would be forthcoming from these organizations shortly.

The Vice-Chair stated that the Board of Advisors held their initial organizational meeting on June 28, 2004, followed on June 29, 2004, by the initial organizational meeting of the Standards Board. Both meetings were held in Houston, Texas. Vice-Chair Hillman reported that both meetings were well attended, and that both Boards had voted to adopt Roberts Rules of Order to govern their meetings. The Vice-Chair also reported that each of the Boards had decided to select 3 subcommittees. Both Boards will have a subcommittee to institute the search for EAC Executive Director and a subcommittee to develop by-laws. In addition, the Standards Board voted to create a subcommittee to develop a process for electing the Executive Board. The Board of Advisors voted to create a subcommittee to deal with voting systems guidelines.

Vice-Chair Hillman finally reported that she had been selected as the designated federal officer to both boards by a tally vote of the EAC, and that, if the EAC budget would permit, both boards would like to meet again in January 2005.

Technical Guidelines Development Committee-

Chairman Soaries remarked that Commissioner DeGregorio responsible for working with the National Institute for Standards and Technology (NIST) to form the Technical Guidelines Development Committee (TGDC), because his background in election administration gave him a unique understanding of the importance of the TGDC mission.

The Chairman recognized Commissioner DeGregorio to give an update on the TGDC. Commissioner DeGregorio noted that section 221 of HAVA requires the development of voluntary voting systems guidelines . The TGDC is responsible for drafting these guidelines for the Standards Board, the Board of Advisors, and the EAC to consider. Commissioner DeGregorio recognized that the last voting system standards document was developed by the Federal Election Commission in 2002, and that over the next year, all parties involved in this process would be working to update these standards and to develop new guidelines for the testing of electronic voting systems. Commissioner DeGregorio remarked on the close working relationship that has developed between the EAC and NIST over the last several months particularly with NIST Director and TGDC Chair Dr. Arden Bement, Ms. Susan Zevin (retired), Mr. Allan Eustis, and Mr. Craig Burkhardt. The Commissioner noted that the EAC and NIST have worked closely to select the 14 members of the TGDC, representing various organizations required by HAVA, and that he believes that found the best people available to conduct the TGDC's work. Commissioner DeGregorio noted that the TGDC held its first meeting July 9, 2004 and introduced NIST Voting Systems Standards Project Director Allan Eustis to give a brief review of the initial TGDC meeting.

Mr. Eustis, speaking for himself and Dr. Bement, expressed his appreciation for the efforts of the EAC and its staff to ensure that the NIST/EAC working relationship remained strong. Mr. Eustis noted that the TGDC's initial set of recommendations for voting systems guidelines are due to the Executive Director of the EAC in April 2005 in accordance with the nine month deadline required by HAVA. Mr. Eustis noted that fourteen of the fifteen appointed members of the TGDC participated in the first meeting and that the Chair set as a goal for the meeting to agree on a procedural roadmap for standards development as well as a preliminary work plan. To that end, Mr. Eustis noted that the TGDC proposed, debated and adopted five substantive motions at the first meeting. The TGDC first resolved to establish three subcommittees of TGDC members to gather and analyze information. Subcommittees were created for Security and Transparency,

Human Factors and Privacy, and Core Requirements and Testing. The TGDC next resolved that the Chair survey the interests of TGDC members and thereafter appoint members and chairs to the subcommittees. The TGDC next resolved that resolutions prepared by subcommittees be considered by the TGDC, and that those adopted be referred to NIST for technical assistance and editing, to again be reviewed by the TGDC upon completion. The TGDC next resolved that adopted resolutions and appropriate explanatory materials comprise the first set of recommendations mandated by HAVA. Finally, the TGDC recommended to the EAC the expediting of registration of currently certified voting system software into the National Software Reference Library at NIST. Mr. Eustis also noted the TGDC Chair Bement expressed the interest that all tasks undertaken by the committee adhere strictly to public transparency requirements of the Federal Advisory Committee Act. All transcripts, proceedings, and meeting minutes will be made publically available at <http://vote.nist.gov/TGDC.htm>.

Chairman Soaries thanked Mr. Eustis for his contributions to the TGDC effort and stated that the EAC was committed provide adequate funding for the efforts to develop the new voting systems guidelines.

Vice-Chair Hillman was recognized and commented that the TGDC had two members from both the Standards Board and Board of Advisors who would serve to help coordinate the review process for the voting systems guidelines by the boards.

Help America Vote College Program-

Chairman Soaries noted that an adequate number of well trained poll workers usually leads to success on election day, and that the EAC is committed to assisting local election officials in poll worker recruitment. The Chairman also noted that HAVA created a specific opportunity to involve young people as poll workers and recognized Commissioner Martinez to discuss the program.

Commissioner Martinez stated that sections 501 and 502 of HAVA created the Help America Vote College Program to encourage college students to work as nonpartisan poll workers, and that the program is to be established not later than one year after the appointment of the EAC Commissioners. Commissioner Martinez noted that this is to be a pilot project for more permanent endeavors and that the \$750,000 appropriated for FY 04 would develop the initial framework for the program. The Commissioner went on to state that the EAC would hire a full time staff person to

run this program and that the individual chosen would need experience in federal grant management. Commissioner Martinez reported that the EAC would look to 3 types of organizations for assistance with this program. These organizations would be school-based umbrella organizations, national and student interest based organizations, and state and local election administrators.

**Recommendations:
National Student
Parent Mock Election-**

Chairman Soaries again recognized Commissioner Martinez to discuss and make recommendations on the Grant to the National Student Parent Mock Election organization.

Commissioner Martinez reported that for FY 04, Congress had earmarked \$200,000 for the EAC to distribute as a grant to the National Student Parent Mock Election group. This figure was altered to \$198,820 after the government-wide rescission. Commissioner Martinez noted that the group was a national nonprofit organization dedicated to promoting voter participation through educational activities for students and their parents. The Commissioner also reported that EAC had requested information from the President of the organization and consulted with the Office of Management and Budget (OMB) on reporting requirements for this grant. Having completed these tasks, Commissioner Martinez moved to recommend that EAC request GSA to distribute as a grant \$198,820 to the National Student Parent Mock Election organization. This motion was seconded by Commissioner DeGregorio, and the motion carried unanimously.

Best Practices-

Chairman Soaries next recognized Commissioner DeGregorio to discuss recommendations for EAC HAVA Best Practices Tool Kit.

Commissioner DeGregorio reported that pursuant to section 241 of HAVA which require the EAC to conduct periodic studies of various election administration issues, EAC has, over the past 4 to 6 weeks focused on developing a best practices tool kit which the EAC will make available to all election administrators and others. The tool kit describes shared best practices from election administrators for election management and security, lever voting systems, punch card voting systems, optical scan voting systems, direct recording electronic voting systems, and for provisional balloting. The Commissioner noted that the tool kit was developed from testimony gathered in the two EAC public hearings (May 5, 2004 in Washington, DC and June 3, 2004 in Chicago, Illinois) and

from direct discussions and meetings with local election officials from numerous jurisdictions around the country and that it had been reviewed by the EAC Standards and Advisory Boards. Commissioner DeGregorio also stated that the document is a work in progress and that the EAC would continue to receive additional feedback, best practices information and comments. Commissioner DeGregorio next moved that the EAC adopt the current HAVA tool kit document. Commissioner Martinez seconded the motion and thanked Commissioner DeGregorio for his leadership on this project.

Vice-Chair Hillman was recognized and asked Commissioner DeGregorio about the length of the document. Commissioner DeGregorio responded that the document was approximately 63 pages including links to various informational material on the internet.

Chairman Soaries nexted asked Commissioner DeGregorio when the product would be available. Commissioner DeGregorio responded that EAC webmaster was working on the document at that very time, and that a press release would be distributed when the documents was available on the web at www.eac.gov. The Commissioner also noted that EAC would distribute the document by a number of other methods.

Chairman Soaries called for a vote on the motion and it carried unanimously.

Public Hearing on Poll Workers-

Chairman Soaries recommended that EAC hold one more public hearing this fiscal year. The hearing will be held on or about September 13, 2004 in Atlanta, Georgia. The purpose of this hearing will be to take testimony on poll worker recruitment, training, and retention. The Chairman noted that the Secretary of State of Georgia has indicated a willingness to assist the EAC for this hearing.

Vice-Chair Hillman made a motion that EAC adopt this recommendation. Commissioner DeGregorio seconded the motion and it carried unanimously.

November Election Research Project-

Chairman Soaries next recognized Vice-Chair Hillman to make a recommendation on a proposed EAC research project.

Vice-Chair Hillman noted that there was a pressing need to collect up-to-date data on election day since EAC receives numerous calls requesting data on a variety of election related topics. The Vice-Chair suggested that this information needed to be housed in one central location, and as a clearinghouse EAC could gather this useful information and also be in a unique situation to disseminate the information through EAC database of local election officials. At a minimum, the Vice-Chair suggested that EAC collect information on the number of registered voters and how many of them actually voted, the number and types of various voting systems in use, and other useful information that would provide guidance and assistance to election officials. Vice-Chair Hillman made a motion that EAC proceed with the development of this data collection project. Commissioner Martinez seconded the motion.

Commissioner DeGregorio commented that election officials certainly had significant valuable information and that EAC needed to collect and analyze this data.

Chairman Soaries called for a vote on this motion and the motion carried unanimously.

Public Meeting Schedule-

Chairman Soaries next called upon Vice-Chair Hillman to make a recommendation on the EAC's proposed meeting schedule for the remainder of 2004.

Vice-Chair Hillman noted that EAC meetings had been tentatively scheduled for August 10, 2004, September 13, 2004, September 30, 2004, October 14, 2004, October 28, 2004, November 23, 2004, December 2, 2004 and December 16, 2004. The Vice Chair noted that all meetings except the September 13, 2004 meeting in Atlanta, Georgia would be held at the EAC offices at 1225 New York Avenue, N.W., Washington, DC, and would begin at 10:00 a.m. Vice-Chair Hillman moved that the meeting schedule for the remainder of 2004 be approved by the EAC. Commissioner DeGregorio seconded the motion and it carried unanimously.

Electronic Voting Security Policy-

Chairman Soaries next discussed the EAC position on electronic voting security and the recommendations first outlined in his speech in Maryland on June 8, 2004. The Chairman noted that evidence and testimony received by the EAC at the May 5, 2004 public hearing indicated not only that the use of electronic voting systems was an important and increasing trend in the administration of elections in the United States, but also that their

is significant national debate among academics, election administrators and advocates on the security of electronic voting systems. The Chairman went on to state that because of this debate, the EAC recommends five specific steps to increase the security of these systems. First, the EAC recommends that every jurisdiction using electronic devices in November should identify and implement enhanced security measures in November. Second, all voting software vendors should allow election officials with whom they have contracted to analyze the proprietary source code of their software and to protect that process by using appropriate nondisclosure agreements. Third, every voting software vendor should submit their certified software to the National Software reference Library (NSRL) at NIST. Fourth, the EAC will begin to solicit information about suspicious electronic voting system activity and will request aggressive investigative and prosecutorial responses from the U.S. Department of Justice Election crimes Branch. Fifth, the EAC will begin to document incidents and record data concerning electronic voting system malfunctions in November. The information will be submitted to the EAC Technical Guidelines Development Committee that will be drafting the new voluntary voting system guidelines.

Chairman Soaries opened the floor for discussion and comment. Commissioner Martinez commented that he was supportive of these measures, specifically the first initiative. Commissioner Martinez noted that election officials needed to communicate with their constituencies on what safeguards are available and in use for the November election.

Vice-Chair Hillman asked how the EAC will communicate these recommendations. Chairman Soaries responded that the Commission would discuss communication if the motion passed.

Commissioner DeGregorio asked what type of response the Chairman expected from the vendors. Chairman Soaries stated that he believed that a formal EAC request would get a formal and significant response from the vendor community.

Vice-Chair Hillman moved to accept the recommendations on electronic voting security. Commissioner Martinez seconded the motion and it carried unanimously.

Presentations:

Chairman Soaries next introduced Mr. Craig C. Donsanto, Director of the Election Crimes Branch of the U.S. Department of Justice.

Mr. Donsanto thanked the EAC for the invitation to make his presentation and stated that since 1976 he has overseen the prosecution of election offenses for the U.S. Department of Justice (DOJ). Mr. Donsanto stated that the voting process is the instrument by which the public holds the government accountable for their actions. Because this process is at the core of our democratic system, any attempt to circumvent the process is considered a serious crime. Mr. Donsanto also noted that DOJ had recently elevated the priority status of election crimes and that DOJ would soon be conducting training sessions for Assistant U.S. Attorneys from all regions of the country, and that each federal judicial district had at least one district election officer. Mr. Donsanto stated that it is not a crime to make a mistake in the conduct of elections, but it is a crime to disrupt the process with malicious intent. Mr. Donsanto next listed a number of activities that did provide a basis for federal prosecution. These activities include paying voters to register or to vote, preventing voters from participating in election where federal candidates are on the ballot, intimidating voters, malfeasance by election officials, falsely and willfully claiming U.S. citizenship to register or to vote, providing false information concerning a voter's residence in order to qualify a person to vote in a federal election among others. Mr. Donsanto closed by stating that he looked forward to working with the EAC to protect willful and determined acts against the voting process.

National Software Reference Library-

Chairman Soaries next introduced as the last presenter of the day Mr. Douglas White, Director of the National Software Reference Library (NSRL) at NIST.

Mr. White thanked the Chairman and the Commissioners for the opportunity to talk about the NSRL. Mr. White stated that since 2000, he developed a physical collection of over 5,000 software packages in a secure environment to enable law enforcement personnel and other to match files on a computer with known software files through a unique identifier. This process is used also used to find unknown or suspect files on a computer, to look for malicious files, and to identify duplicate files. Mr. White noted that the unique identifier for each file was called a "Hash" and that it was used like a person's fingerprint to identify a file based on its contents. Mr. White also noted that the NSRL can assist the voting systems process by determining that software used during an election is the expected software that has been tested and certified, and that the software remained unaltered during distribution, installation, setup and use. Mr. White concluded his presentation

by noting that two voting systems vendors had already filed their software with NSRL.

Vice-Chair Hillman was recognized and asked Mr. White what this program meant to local election officials. Mr. White responded that the NSRL process would prove that the software resident on any particular voting machine was the same software that was tested and certified. Mr. White also noted that the process could prove that the chain of custody for the software had not been broken.

Adjournment:

Chairman Soaries thanked Mr. White for his contributions and asked for a motion to adjourn the meeting.

Commissioner Martinez moved that the meeting be adjourned, and the motion was seconded by Vice-Chair Hillman. The motion carried unanimously. The meeting was adjourned at 2:02pm.