



February 25, 2008

Chairman Serrano, Ranking Member Regula, and members of the Subcommittee on Financial Services and General Government:

The Help America Vote Act of 2002 requires the Election Assistance Commission to:

- Generate technical guidance on the administration of Federal elections.
- Research and report on matters that affect the administration of Federal elections.
- Provide information and guidance with respect to laws, procedures, and technologies affecting the administration of Federal elections.

Specifically the law states in Section 202:

"The Commission shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections by carrying out the duties described in part 3 (relating to the adoption of voluntary voting system guidelines), including the maintenance of a clearinghouse of information on the experiences of State and local governments in implementing the guidelines and in operating voting systems in general."

On October 21, 2005 the Government Accounting Office released its report, "Elections: Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Under Way, but Key Activities Need to be Completed (GAO-05-956)". In this report the GAO stressed the need for a "clearinghouse for information on problems and leading practices".

The GAO has also stated: "The continued absence of a national clearinghouse for voting system problems means that segments of the election community may continue to acquire and operate their systems without benefit of critical information learned by others regarding the security and reliability of those systems."

Contrary to HAVA and GAO recommendations, the EAC has constantly ignored and denied their responsibility to keep local and state election officials apprised of problems with regards to their voting systems.

In March 2007 computer scientists reviewing voting machines used in the Sarasota County, Florida 2006 election found a serious security vulnerability with the counties ES&S iVotronic DRE voting machines. Notification of this vulnerability was sent to the EAC, by myself, with a request that they pass on the information to other states and counties who may have the same voting machines so they would know of the vulnerability and of the suggested mitigations. The response from the EAC's spokeswoman, Jeannie Layson, clearly stated that the EAC had no responsibility regarding systems they had not certified. She said:

"EAC's voting system certification program was implemented in January of this year. Until that time, voting systems were evaluated by NASED, which is not a federal

agency. When the Commission adopted its certification program, it decided not to grandfather or transfer any voting systems that had been qualified by NASED. The Commission felt it was important to conduct its own evaluation of voting systems that had been qualified by NASED. That's why any NASED-qualified voting system, including the one you referenced, that wants an EAC certification must be submitted for end-to-end testing. The system you referenced has not been through EAC's certification program. If and when it does, it will be our responsibility to make sure the manufacturer adheres to the terms of our program. Also, when a system comes to us for certification, relevant substantiated reports or reviews of the voting system may be taken into account. And if an instance such as this were to arise regarding an EAC-certified system, we would certainly investigate."

The concern was never whether the voting system was NASED qualified or EAC certified but that it was seriously flawed and warning of that flaw needed to be passed on to users of that system. The EAC refused to take any action.

I responded by asking Ms. Layson, "What responsibility does the EAC have with regard to warning states about what may be security vulnerabilities in specific voting systems?" She answered, "The EAC certification program will collect anomaly reports which we will then investigate and share with election officials and the public". She ignored the fact that the EAC's mandate to be a clearinghouse of information for voting system problems is not specifically tied to its certification duties.

The recent re-certification testing of voting systems in Colorado found that Hart InterCivic eScan optical scan voting machines picked-up stray marks and, in some cases, ignored correctly marked votes and read those stray marks. Hart InterCivic agreed to provide the state of Colorado with software updates that they felt may solve the problem. What about the rest of the states who use those machines? The EAC ignored emails that pointed out that no one would warn other states.

My request to the EAC commissioners:

"What about the rest of Hart's customers around the country?? Unsuspecting counties and states will allow their voters to vote and have their ballots tabulated by machines proven to have significant error rates. And, the company agrees with that fact because they are going to provide Colorado with software which MAY fix the problem.

"Whose job is it to ensure that every county in the US that uses these machines is warned that there is a problem and that Hart acknowledges the problem? Colorado? Hart InterCivic? NASED? The states have never passed on information like that to other states. The vendors will cover it up and hope no one notices. NASED has either taken no action in the past or drug their feet until it was too late. How about the EAC?"

The EAC refused to take any action.

Just last week 6 counties in New Jersey reported that some Sequoia Advantage Direct Recording Electronic (DRE) machines had what may be a serious software problem that incorrectly reports the party totals. The voting machine's internal memory does not agree

with the internal paper record. This is, again, an issue that should be reported to other states that are using the same voting machines. Some Pennsylvania counties will use this same system in their primary. Who will warn the Pennsylvania counties? The EAC has refused to take any action.

As serious voting systems problems have been reported, the EAC has stayed quiet. The fact that a problem is found on a system in Florida or Colorado or New Jersey does not mean that the problem is isolated in those states. It is likely to be a problem in every other state that uses the same system and possibly in ever other state that uses other systems from the same vendor. We should not expect that the vendors will take action. They should take action but there is no requirement that they do. We should not expect that an affected county take action. It is not their job to warn the rest of the country. Only the EAC has the duty, as mandated by federal law, to act as a clearinghouse for voting systems problems.

The EAC needs to be asked about this failure to meet their legislated mandate, and they should be held responsible for failing in their duty to local and state elections officials and the voters of the United States. The EAC needs to be the conduit for the flow of information about voting systems. If a system used in Maine has a problem, then election officials in Arizona should know what the problem is and how to mitigate the problem, if possible.

This is the responsibility of the EAC, per HAVA, and they refuse to fulfill it.

Sincerely,

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