



March 7, 2008

To the United States House Administration Committee

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 Section 202 of the law states:

“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)¹. 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.”

The GAO was right. This is exactly what has been happening.

Contrary to HAVA, GAO recommendations, and Congressional inquiries, 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.

A recent case is only one example of the EAC’s failure to fulfill its HAVA mandate. In the New Jersey primary on February 5, 2008, six counties found a problem with their Sequoia Advantage Direct Recording Electronic (DRE) voting machines. The internal memory did not agree with the internal paper tape record with regards to the party turnout totals. So, for instance, a machine may have registered 159 Democratic ballots and 152 Republican ballots but the turnout total read 157 Democratic ballots and 154 Republican. Officials claimed the vote totals were accurate, but it’s difficult to understand how they could have been when the numbers of Democrats and Republican ballots were in question.

¹ <http://www.gao.gov/new.items/d05956.pdf>

Media reports from New Jersey quoted Sequoia Voting Systems as saying they would be informing their customers of the problem and any solutions to the problem. But all Sequoia did was to place a “blog” on their website that says the problem was a poll worker error. According to an article in the Philadelphia Inquirer on 6 March election officials in Montgomery Co PA were surprised to learn of the problem. No one told them to read the “blog”.

Meanwhile, though the EAC has taken no action, the Mercer Co. NJ Clerk has asked the county’s election director to request that the Attorney General investigate to find the cause of the problem (see attached). Since she never had this problem arise before, she does not believe that poll worker error can be the source. It appears that an investigation may now be carried out.

We notified the EAC that there had been a problem and that we cannot expect Sequoia to inform their customers. We reminded the EAC of their mandate as a clearinghouse and have not received a response.

This is only one of many examples of voting system problems that the EAC has ignored. We have personally informed them of many others, and, in response, the Commission told us that they have no responsibility at all regarding voting systems they did not certify.

One of the Commission’s duties under HAVA is to be a clearinghouse of information “in operating voting systems in general.” The GAO has underscored the importance of that fact in two reports. Yet the EAC maintains that it is not their responsibility.

In testimony before the Subcommittee on Financial Services and General Government late last month the EAC testified that they don’t have the staff to take on the clearinghouse duties. However, the GAO reported in 2007 (GAO-07-576T)² that the EAC had spent 25 percent of its 2006 appropriations – \$3.5M – “for research and study and to establish the EAC as a national clearinghouse of election administration information”.

These inconsistent facts raise two urgent questions: What did the taxpayers receive for the \$3.5M the EAC spent on a project they now claim they have no staff to support? And why did the EAC spend 25% of its 2006 appropriations developing a project for which they claim they have no responsibility?

Not only is the EAC’s denial of their clearinghouse responsibilities a violation of the letter of HAVA, but it is also inconsistent with their 2006 expenditures. More importantly, it is a violation of the spirit of HAVA to help America vote.

Ellen Theisen
660 Jefferson Ave.
Port Ludlow, WA 98365
360-437-9922

John Gideon
3417 NW Donida Drive
Bremerton, WA 98312
360-377-4925

² <http://www.gao.gov/new.items/d07576t.pdf>