



December 8, 2008

Rosemary Rodriguez
Chairwoman, United States Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005

Re: 2008 General Election Performance and EAC Strategic Plan

Dear Commissioner Rodriguez:

With over 130 million votes cast during the November 4, 2008 General Election, no so-called election systems “meltdown”, and the relatively few reports of actual election equipment issues that were so often feared in the lead up to the historic 2008 General Election, it is important to document the election for its many successes and provide some important context to the issue of voting system performance. While a few reports received significant attention in local media coverage, many of these issues signaled problems in the procedural steps that are recommended for election officials to follow for quality control in ballot design or equipment deployment rather than systemic problems with the actual equipment. Other reports pointed to the need for local election officials and industry providers to continue to work together to make sure a clear plan of action is established to make sure that voters are not turned away from polling places should some level of disruption occur with any part of the voting system.

The Electronic Frontier Foundation, in cooperation with the Election Protection Coalition, has provided a valuable service thus far with the collection of data from the field on Election Day. Out of a total of 86,000 phone calls, 1,865 were characterized as equipment malfunctions/problems representing 2.1% of all calls. In an industry effort to track the American voter’s experience on Election Day, the Election Technology Council undertook its own review of the call information made available through the Our Vote Live website, <http://www.ourvotelive.org/table.php>. Here is the breakdown of the data using our internal analysis:

- Of the 1,865 total calls categorized as equipment malfunctions, 1,173 actually document at least one instance of a voting unit reported as inoperative. Due to the content of the call information, we continued to give extreme deference to the caller.
- 378 of the calls were simply complaints on the voting experience and provided no actionable information.

- 177 of the calls were complaints that were procedural in nature such as the use of ballot marking instruments that were contrary to instructions provided on the ballot or dealt with issues such as instructions provided from poll workers after a ballot was rejected due to over- and undervoting at the precinct.
- 112 of the calls simply provided no information.
- 13 of the calls were improperly categorized as equipment malfunctions rather than voter registration issues.
- 7 of the calls pertained to the processing of voter eligibility during an early voting period.
- 3 of the calls pertained to the absentee voting process.
- 2 of the calls pertained to the accessibility of the polling place.

While 1,173 calls are properly categorized as possible equipment malfunctions at the time the call was logged, our analysis indicates this type of information should be shared with the affected local election authorities to determine what steps were taken and to confirm the validity of the report. Although our internal review continued to provide extreme deference to the report from each call, we feel that many of the reports would be found to be of a routine nature once the local election official was able to review each report's content. It is instructive to note that there are 3,370 election jurisdictions in the United States, so 1,173 equipment failures represent an average of less than one reported malfunction per jurisdiction.

Groups such as the Electronic Frontier Foundation, Election Protection, and Verified Voting should be applauded for initiating this type of data collection and sharing it with the general public in its original format. At a minimum, this type of data serves to validate or isolate areas of the country which experienced a disproportionate number of complaints, potentially requiring further investigation. It is clear that the EAC may find a role for itself in assisting with the review of this data by further refining and categorizing what is and what is not an equipment malfunction. The ETC encourages the EAC to work with this and other publicly available data sources as part of its effort to assess the performance of the 2008 General Election.

EAC Strategic Plan For Voting System Certification

After reviewing the EAC Strategic Plan, the ETC would like to once again, point out a few areas of concern. Under "Goal 4: Test and Certify", the first performance measure listed is amendments to the Voluntary Voting System Guidelines in 2009 and 2012. We urge you to proceed cautiously with amendments to the Voluntary Voting System Guidelines since no voting system has received a final assessment on certification to the 2002VVSS or the new 2005 VVSG. The inability to certify current equipment and adopt clear test plans calls into question the ability of the EAC to properly determine clear test protocols for these current standards. Before proceeding with new iterations, a clear performance measure should be included that involves the establishment of clear test methods, cases, and scripts for both the 2002 and 2005 iterations of voting system standards prior to moving forward.

In addition, we also urge the EAC to consider adopting a cost-benefit approach to decision-making when it comes to the implementation of its certification program and adoption of the Voluntary Voting System Guidelines. As an industry trade association, we have repeatedly urged for industry representation within the standards-setting process in recognition of the critical role industry providers play in our nation's democracy. Without the industry's participation directly in the standards-setting process, the EAC will continue to engage in an effort that is contrary to traditional standards-setting models and will lack the ability to initially assess the industry impact of its decisions.

The ETC would also like to point out a glaring omission for a performance measure in "Goal 4: Test and Certify." No performance measure, or target date, is listed for an actual final assessment on any voting system currently submitted for certification. An outside observer would presume that this is still a goal of the EAC and we would encourage you to list this in the hopes that the EAC shares some level of urgency for a certification program that can only be characterized as costly, inefficient, incompletely defined, and thus far completely ineffective in its implementation.

The ETC feels that the November 4, 2008 General Election was a tremendous success given the increased negative attention that has been levied upon election officials in recent years. The credit for the success of this election must be given to our state and local election officials as they have made tremendous strides in their approach to completely new voting systems with improved election administration. While lessons can always be learned, we should not let narrow policy views take away from the widespread success and the level of satisfaction that the nation's voters currently feel and express in public opinion polling.

Sincerely,

A handwritten signature in cursive script that reads "David Beirne".

David Beirne
Executive Director