

**The EAC is Beginning to Fill the Institutional Void,
But Changes in HAVA May Be Needed**

by
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(1) Before HAVA, An Institutional Void

In November 2000, the resolution of the Presidential election in Florida had required a determination by the US Supreme Court. The post-election dispute had embarrassed this country before the world. We were promoting democracy to underdeveloped countries in every continent while our own election process clearly needed considerable improvement. In early 2001, a number of study groups considering potential changes to our election process were established by universities, professional associations and organizations associated with state and local governments. The results of those efforts generated many policy and legislative recommendations that would, along with backroom bargaining in Congress, lead to adoption of the Help America Vote Act (HAVA) in late 2002.

In addition to these studies, the International Foundation for Election Systems, in the Spring 2001 issue of its magazine *Elections Today*, presented articles by several knowledgeable individuals on the administrative problems of US elections. I was honored to be among those selected, and the title of my article was “Filling the Institutional Void.”

The idea that I presented was that, unlike other areas of civil activity, there was no adequate federal/state partnership in elections at that time. I specifically referred to education and transportation as exemplars because, in those areas, the states and their local governments, rather than the private sector, provide a major portion of the public services, while the federal executive branch has been given, through legislation in Congress, significant but different responsibilities worthy of cabinet-level departmental status. In education, the states and their subdivisions provide the infrastructure of public schools, colleges and universities. In ground transportation, the states construct and maintain highways. In both areas, the federal departments undertake data collection to understand national conditions in their respective areas of responsibility. One concern of the US Department of Education is the progress of students while an essential interest of the US Department of Transportation is highway safety. Both departments use analyses of the data collected to help them establish the direction of research and the results expected from grants and contracts to be issued. Both departments issue standards, voluntary in the case of education. Acceptance of federal funds generally means agreement to carry out the functions for which the funds are given. In transportation, federal funding for highway construction has been, for decades, an unstated requirement of federal domestic policy.

An examination of the functions of other federal departments that are specific to important domestic activities, such as Agriculture and Health and Human Services, demonstrates also that data collection and analyses, in order to determine current conditions and to recommend public policy, are major activities. Research, issuance of grants and contracts, as well as the setting of national standards, are very important functions in these departments. In general, the thrust of federal government policy has been to establish organizations that carry out functions that promote public health and safety. Until the Florida disaster, it was not fully appreciated that “the protection of the voting process is as important for the well-being of the body politic as is protection of public health and safety for the bodies of our individual citizens.”

(2) A Brief History of the Federal Office of Election Administration

In 2001, the Office of Election Administration (OEA) was operational and its antecedent, the Clearinghouse on Election Administration, had been first authorized in 1972. The OEA was a 5-person group situated within the Federal Election Commission which, except for that small office, was wholly devoted to the regulation of campaign financing. The OEA had carried out, as best it could, a clearinghouse function for election administration and had, with a special appropriation of just \$225,000, managed to issue voluntary standards in 1990 for “punch-card, mark-sense and direct-recording electronic voting systems” after more than a decade of work. In 2001, a revised set of standards had not yet been issued.

It is useful to present a brief history of the OEA for two reasons: first, to indicate how far we have come in 2006, and second, to demonstrate that voluntary standards without any force behind them failed to prevent the Florida disaster of 2000.

In late 1971, the Congress was considering legislation that would become the Federal Election Campaign Act of 1972. That law would set limits on expenditures for presidential campaigns. In the course of debate, Representative William J. Keating (R-OH), from the Cincinnati area, introduced an amendment that would establish the Clearinghouse. Mr. Keating’s statement on November 30, 1971 in support of his amendment included the following:

“Election day is the most important day to any democratic nation. When the Government fails to function efficiently on this day, a tremendous credibility gap occurs between the Government and the people. All the sections of the bill [on campaign financing] are meaningless if we are unable to properly execute the election itself.

“In Cincinnati this past election the citizens woke up the morning after the election to read in the paper “There are no election returns to report. There won’t be any for three days.” ... Research into this problem shows that there have been numerous difficulties across the nation.

“In Detroit, during the primary election the newspaper headline was “Computers Foul Vote Count” ... Similar stories have appeared in San Francisco, Atlanta, Los Angeles, and indeed in other cities across the Nation. ... This amendment will allow for State and local officials to turn to a national center or clearinghouse for information on good and

bad ideas in voting systems ...”

Keating’s amendment was adopted and the Clearinghouse was started as an appendage within the Office of Federal Elections of the General Accounting Office. Two years later, the Congress agreed that the initial arrangements for campaign finance regulation needed revision, and the Federal Election Commission (FEC) was created. The Clearinghouse was not eliminated, as a committee of the House has first proposed, but was continued in the new commission with the help of Representative Bill Frenzel (R-MN) of Minnesota. He had stated that the Clearinghouse

“is the only good thing the federal government does to help the state and local governments run their election administration systems.”

In its roughly 30-year history, the Clearinghouse (renamed the OEA in 1996) issued a number of valuable reports, some written in-house and some contracted. In addition, its Advisory Panel of state and local government officials had voted unanimously in 1977 that a program of development of voluntary engineering and procedural performance standards for election equipment should be undertaken. The need for human engineering standards was understood. Panel members agreed that “neither the manufacturers of voting systems nor most state and local election offices paid much attention to how the voter interacts with the various voting devices.” In 1980, Congress agreed that a study of the feasibility of establishing standards should be carried out but, as explicitly stated in the legislation, no funding for the study was provided. The standards, as finally issued in 1990, contained no requirements for consideration of human factors.

A problem with the standards was that implementation was voluntary and there was no provision of federal funding whose acceptance would guarantee conformance or, at least, would guarantee the right of the federal government to demand conformance. This problem showed itself clearly in the Florida election of 2000. The standards stated:

“When pre-scored ballot cards are used, the punching device shall consist of a suitable frame for holding the ballot card, and a stylus which the voter uses to remove a scored area of the card to cast a vote. The stylus ... shall incorporate features to ameliorate the effect of skewed insertion, and to ensure that the chad ... is completely removed.”

To the best of this author’s knowledge, no stylus without spring-loading has been able at any time “to ensure that the chad is completely removed,” and no spring-loaded styli were used in Florida. Furthermore, no voting equipment of this type was ever tested prior to use and rejected for its inability to completely remove chad. Thus, despite the standards’ adoption in Florida, chads happened, and the differing interpretations in the several counties of what condition of chad constituted a vote was the source of the Supreme Court’s conclusion that there was a denial of the Constitutional requirement of “equal protection of the laws.”

(3) Major Functions of the EAC Under HAVA

Many of the functions that make federalism work have been given to the EAC under HAVA. Later, some problems will be specifically addressed.

(3.1) The Commission: The EAC is headed by an independent commission whose members are nominated by the President and confirmed by the Senate. The new arrangement replaces the unsatisfactory situation in which the OEA was located within an agency with a different primary function. Funding of the OEA was subject to Congressional views of the work of the FEC. Some members cared little for the FEC's function, regardless of their opinions as to whether that agency was efficient or effective in carrying out its mandate. A different situation prevails now. The EAC's performance stands on its own merit.

(3.2) Some Basic Functions: HAVA specifically states that the EAC has no regulatory capability, nor has it power of subpoena. One of EAC's functions is to undertake research including the issuance of grants and contracts on any of a large number of subjects enumerated in HAVA. A second is to produce Voluntary Voting System Guidelines (VVSG), a continuation of the voluntary standards work of the OEA. A third is to undertake the accreditation of Voting System Testing Laboratories (VSTLs), replacing the *ad hoc* work of the National Association of State Election Directors (NASSED), which had carried out that activity for the OEA. The institutionalization of the accreditation process in federal law is a significant step forward. NASSED's work was valiant, and its members should be honored for their personal contributions to election integrity, far in excess of the actual monetary resources that they could contribute. However, the most powerful democracy in the world requires a process involving technical professionals who can be assigned solely to the activity with a clear mandate and a clearly identified budget. HAVA has made that possible.

(3.3) Mandatory Standards: Real technical standards for voting systems are written into law in HAVA. These are not the voluntary guidelines that the EAC is to develop. These are the basic system requirements specified in Sections 301, 302 and 303 of the law.

For example, under Section 301, each voting system must produce a permanent paper record with a manual audit capacity. I understand this concept to mean that the set of each voter's choices, totally divorced from the identity of the voter who cast them, must be available on paper. Stored electronic ballot images, which can be printed, enable DRE voting systems to meet this requirement, but mechanical lever machines, which are not capable of retaining individual voter's choices, cannot meet it, in my opinion.

Under Section 302, provisional ballots are required to be issued to voters who believe that they are entitled to vote in a particular jurisdiction but whose names are not on the registration lists there. Under Section 303, a statewide computerized voter registration list with immediate local access is required to be developed in each state.

(3.4) Strong Technical Support: The National Institute of Standards and Technology (NIST) is assigned by HAVA as technical support to the EAC. Its director chairs the Technical Guidelines Development Committee (TGDC), which has the function of recommending revised VVSG to the EAC. Among the 14 additional members of the TGDC at this time are two persons from local governments, four from state governments, two from the federal agency concerned with accessibility for the handicapped, one from the American National Standards Institute, two from relevant professional societies, two are from private industry and one member is a highly-regarded mathematician from MIT.

In addition to the function of developing proposed VVSG, NIST has responsibility for recommending whether proposed VSTLs should be accredited. These laboratories test election equipment hardware and software against the VVSG in order to make the results of such tests available to all states. This arrangement eliminates the need for each state to repeat the hardware and software examinations. NIST has had an in-house program for a long time, called the National Voluntary Laboratory Accreditation Program (NVLAP), that is developing the procedures for accrediting the VSTLs.

(3.5) Clientele Interaction: Two advisory committees to the EAC are mandated. The 37-member Board of Advisors primarily consists of appropriate representatives of state and local governments and the federal government. The 110-member Standards Board consists of representatives of state governments and local governments within each state. The District of Columbia and several US territories are considered states for this purpose. The Board of Advisors and Standards Board are assigned the responsibility of reviewing and commenting on proposed VVSG.

Recently, I received a communication from a voting system activist who claimed that the activist community believes that the EAC is “pro-vendor.” I have listed the organizational relationships of the members of the TGDC, as well as Board of Advisors and the Standards Board. Biographies of the commission members and its executive director are printed in the EAC’s Annual Report for 2005, available to anyone. It is certainly clear to me, and should be clear to anyone with the facts in front of him or her, that there is no such bias. The EAC has every reason to deserve the public’s confidence in the highly professional nature of its actions, as these are directed towards improving the administration of elections for the benefit of all citizens.

(4) Recent Events Raising Concerns

An itemization and discussion of recent significant occurrences can assist us to decide what additional powers or capabilities are needed under HAVA to improve public confidence in the administration of federal elections.

(4.1) Voter Registration Inaccuracies: Before the passage of the National Voter Registration Act (NVRA) in 1993, names of persons who had not voted in some number of years were “purged,” that is, they were automatically removed from voter registration rolls. In an era of manual record-keeping and very poor data communications, that procedure was a reasonable

response to a difficult problem, as long as the duration of non-voting before purging was at least two years. Under NVRA, this process became unlawful. Now, only the receipt of factual information, revealing that a person has died, moved, or lost the right to vote due to a felony conviction or determination of mentally incompetency under state law, can lawfully allow a name to be dropped from a registration list. The NVRA required that applications for voter registration must be made available at motor vehicle agencies, offices that provide public assistance or services to persons with disabilities, and Armed Forces recruitment offices.

The problem of maintenance of accurate and up-to-date registration lists for the American population is a challenge, as citizens are very mobile. The issue was clearly demonstrated in the administrative disaster of the Florida Presidential election of 2000. Testimony at a hearing of the US Commission on Civil Rights soon after that election revealed that a number of persons who thought that they had submitted adequate applications through their local motor vehicle agency did not find themselves registered at their polling places.

The HAVA requirement of a statewide computerized voter registration list is a major effort to foster real-time accuracy in registration rolls. In view of the incomplete data communications that exist among all of the many agencies that must supply data to assure correctness of registration lists, some states have begun to divide their registrants into two categories: “active,” and “inactive.”

The complete examination of the registered voters in the Washington state governor’s race in 2004 further demonstrated the problem. The winner’s margin was 129 votes out of nearly 3 million votes cast, but it was determined that there were 1401 votes by convicted felons who had not received certificates of discharge from the sentencing court, 19 votes by dead persons, six double votes, 177 erroneous provisional votes and 77 extra votes from a single county that were in excess of the number of voters reported to have voted there. The Washington state judiciary ruled that the fact that there were more unlawful votes than the margin of victory did not require a new election, the remedy proposed by the losing candidate and his party.

Additionally, voter-roll inaccuracies may have been responsible for the large volume of provisional ballots submitted in some states. An analysis of voter rolls in six states, reported by *The Chicago Tribune* after the 2004 general election, found more than 181,000 registered dead persons. Thousands of other persons were registered to vote in two places.

Strong efforts to require more complete personal identification documents may be considered as part of a concern for more accurate voter registration lists. The Congress, in 2005, adopted a law known as “The Real ID Act” that mandates better security for drivers’ licenses and personal identification cards. Proposed Congressional legislation would mandate use of complete Social Security Numbers for voter identification and require photo IDs at the polls, but such bills have not yet been adopted. Georgia has adopted a photo ID requirement for voter identification which must be purchased, but this effort has run afoul of the Constitutional prohibition on poll taxes.

There probably would be no Constitutional bar or a concern for non-compliance with the Voting Rights Act if the ID document were free and conveniently obtainable by all citizens.

(4.2) The Backlash Against Touchscreen DREs: A major issue of the November 2000 Presidential election in Florida was “intent of the voter.” That was the question whose answer was determined by each county Canvassing Board that reviewed hanging or bulging chads to determine whether they were votes or not votes. A related concern was the large number of overvotes, particularly in Duval County, containing Jacksonville, where 7.5% of the total number of voters lost their votes for President because they voted for more than one candidate. These outcomes caused officials of several states to desire election equipment whose operation prevented these types of errors.

DRE voting equipment satisfies these requirements. Since there are no paper ballots, no questions of “intent of the voter” can arise. Furthermore, the design of the equipment is such that no overvotes can occur. In 2000, DRE voting equipment had been used by 13% of voters throughout the US, even though none had been used in Florida. The use of DREs had climbed steadily from a one percent use in 1980. In addition, 18% of voters throughout the country had employed non-ballot mechanical lever machines in 2000, even though they were deployed in just one county out of 67 in Florida.

By 2002, Georgia and Maryland had purchased DRE equipment for statewide use and Florida had adopted permissive legislation. In 2003, the backlash began. Lawsuits were filed against use of DREs in Florida and Maryland, but the complaints were rejected by the courts. Professor David Dill, a Stanford University computer scientist, convinced officials of his California county not to adopt them. He began an organization called the Verified Voting Foundation, and obtained many signatures on a statement demanding the use of “voter-verifiable paper audit trails” for all voting equipment. A large number of his signers have been members of the leading organization of computer professionals. A number of organizations have sprung up around the country with similar demands. In Maryland, a study of the security of that state’s touchscreen DRE system carried out by Dr. Aviel Rubin, a computer scientist at Johns Hopkins University, was widely reported nationally and caused the state to undertake two studies of how to correct the security defects that were identified.

(4.3) A Related Issue: Open Software: It is certainly true that correctness of results produced by DREs depends on correct software, since there is no independent verification from another source. An effect of this situation, in addition to demands for paper trails, has been calls from the activist community that the computer program code running this type of system be revealed to the public. Under the current arrangement, such software is protected as a “trade secret” and is divulged only to the VSTL and to some users under a non-disclosure agreement. It is not released to anyone else, although it may be deposited with NIST in that agency’s National Software Reference Library. On March 17, 2005, 23 Democratic members of the House of Representatives signed and sent a threatening letter to nine of the nation’s voting machine vendors. The letter, among other subjects, demanded “open and accessible software code.” A

response to the letter was issued by the Election Technology Council, a committee of the trade association called the Information Technology Association of America (ITAA). The response, signed by the ITAA president, stated that “open software code is unnecessary, impractical, and detrimental to the security of US elections.”

(4.4) States In A Quandary About Voting Equipment: The demonstrated antipathy to DRE voting equipment has affected several states in their decision-making on this issue. However, another mandatory standard under HAVA Section 301 is that accessibility must be provided for individuals with disabilities, including the blind and visually impaired, such that they have same opportunity for privacy and independence in voting as other voters. DRE equipment is inexpensively modifiable to include audio so that visually impaired individuals may use it easily. Opposition to DREs on the grounds of possible software errors, and the necessity of satisfying the needs of the visually handicapped community pull state decision-makers in opposite directions. This contradiction may be one reason that some states have delayed final decisions on new voting equipment that can meet all HAVA requirements.

Nevada adopted non-paper DRE voting equipment and, soon after, decided to have the units print “receipts.” When the candidate-selection process is completed by a voter, a paper receipt containing the choices selected is printed and can be seen under transparent plastic. The voter cannot touch the receipt, but may read it. If the voter accepts the receipt as printed, the receipt becomes the official ballot. Alternatively, the voter may reject the receipt and vote again. A videotape of actual voting in Nevada, which did not violate voters’ privacy, has demonstrated that very few voters actually reviewed their receipts. A different implementation of this type of system that is used in other states is arranged to provide the voter a better view of the receipt, resulting in a higher likelihood that the voter will review it. A questionable procedure is that, in some cases, the receipts are presented to the voters sequentially on a paper roll, which implies that if the sequence of voters using a particular machine is known, the specific choices of each voter may be determined. Thus, there is a risk of loss of the secret ballot.

The receipts *not* reviewed by the voters just remain pieces of paper printed under command of a computer program that is not trusted. If a voter discovers, while reviewing the receipt, that its selections do not match the choices shown on the DREs electronic display, he or she may call over a poll worker to demonstrate the difference. In that case, the voter has definitely lost his or her secrecy in voting but has served as the last line of defense against a error that, somehow, through collusion or incompetence, was not discovered by the national testing laboratory or by state or local government election officials. Apparently, the using state governments have concluded that loss of the secret ballot is satisfactory if it serves to identify bad software.

In California, the state’s Secretary of State created a Touch Screen Task Force in February 2003, in response to concerns expressed about the security of this type of DRE system. Even though the task force reported that “there was no consensus on the issue of whether a voter-verified paper audit trail should be required on all voting systems,” the Secretary of State issued a regulation requiring them, and the state legislature adopted that requirement into law. Conny

McCormack, the Registrar-Recorder of Los Angeles County has been an outspoken opponent of the need for paper trails, although she ensures that systems under her direction comply with the law. In June 2005, she testified to the US Senate Committee on Rules and Administration that

“existing DRE systems without voter-verified paper audit trails have the proven track record of doing the best job of all available voting systems ... Printing the paper record adds more time to the voting experience. Everyone is in agreement that it is anathema to voters to add waiting time ...”

A problem that is special to Los Angeles county and other jurisdictions with very diverse populations is implementation of the Voting Rights Act's requirement for ballots in every non-English language that is spoken by five percent or more of the local population. Los Angeles must supply ballots in six of those languages. Several of them employ non-Roman characters.

In Maryland, opposition to the statewide DRE equipment has grown. This month, March 2006, a bill was introduced into the state legislature requiring that optical scan voting equipment be leased throughout the state for the forthcoming federal election this fall. Dissatisfaction has increased to the extent that the fact that Maryland purchased its DREs for \$55 million just four years ago does not seem to faze the proposers. At this time, the House of Delegates has approved the bill but the state Senate has not yet acted.

New York is the state in which the mechanical voting machine was invented in 1889. Its first use in a federal election was in Rochester in 1896. In 1899, Congress adopted legislation that permitted non-ballot voting machines to be used in federal elections, reversing a requirement of 1871 that those elections must use ballots. In the 1899 act, Congress required voting machines to have state approval before they could be used. Thus began the state function of approving use of machines by their local jurisdictions. By 1928, all of New York state was using mechanical lever machines, and that condition has continued through 2005.

Just this month, i.e., in March 2006, the US Department of Justice brought suit against New York state for its lack of progress under HAVA. It appears that the state has taken no action on several fronts including update of its voting machines and implementation of a statewide voter registration file. According to observers of the situation, New York appears “paralyzed” in its inability to take action. It may be that the departure of former director of elections Tom Wilkey to the EAC has left the state with no expertise that it could use to make decisions on this subject. The state will apparently leave decisions on adoption of particular kinds of equipment to its local jurisdictions.

(5) Recommendations

(5.1) Sole Reliance On Software Correctness Must Be Ended: DRE voting equipment without paper backup requires correct software in order to produce correct results. While voting system implementers generally believe that their DRE systems produce correct results, computer

scientists maintain that software cannot be proven to be correct. In addition, assurance of the correctness of the software depends on testing by a VSTL.

While testing and use of software for controlling aircraft stability, automobile combustion and similar “process control” applications has demonstrated that correct software is possible, the costs of testing in those cases can be written off against the sale price of high volume or very expensive products in which public safety and product liability are very essential criteria. It has not been shown, in this writer’s opinion, that the high level of care and expense taken to produce correct software in process control uses is being applied or will be applied in the future to the testing of voting software. The institutional conditions are different. Therefore, I have concluded that sole reliance on correct software in determining election results must be stopped. Public confidence in reported election outcomes demands this change. In any weighing of alternatives between administrative efficiency and public confidence, the latter must win out.

To implement the end of sole reliance on software correctness, verification by a secondary method must be done. When voters fill out paper ballots and the ballots are counted by computer, the ballots must be subject to an automatic partial manual recount of some small number of precincts, for example, three percent. California has required a one percent manual recount for many years. If voters generate their choices through purely electronic methods, a process of independent dual verification (IDV) should be used, also with a small percentage manual recount. The concept of IDV is being developed by the TGDC. Development of methods to carry out IDV without using paper should go forward, a step recommended by a report on the 2004 general election by The Election Center. That organization is the major independent training facility for election officials. To assure that secondary results verification is used in federal elections, either the EAC would have to be given the authority to impose mandatory standards or to offer grants to states willing to adopt it, or HAVA would have to be revised to specifically state the requirements. An additional advantage of implementation is that demands for open software should subside.

(5.2) Interstate Data Interchange of Voter Registrations Must Be Implemented: The mandate of HAVA for statewide computerized voter registration systems requires considerable work to put into place. The EAC should concentrate on fostering effective communications between and among states. Standards are needed for messages constituting changes of address or other changes in voter status that need to be sent electronically from one state’s computer system to another. A standard commercial inter-computer messaging system already exists, called Electronic Data Interchange (EDI). It may be easily extended to the voter registration application.

Typically, voters who move to a new state do not cancel their registrations in the old state, but they may register in the new state. There must be a method implemented to identify the registration in the old state in order to eliminate it. This may mean that a national voter identifier, or a set of coordinated state identifiers, is needed. The likely use of Social Security Number (SSN) by all states for voter registration purposes is problematical, as it is now

prevented by federal legislation except for states that began to use it before passage of the ban. Research is needed on how to tie state identifiers together, if it is politically infeasible to use the SSN. Extension of driver's license identification systems is a likely possibility.

The EAC can assist states that do not have the monetary resources or the trained personnel needed to implement their registration systems. Here is a good application for the clearinghouse function. Experiences of states that have accomplished the feat, including the names of the individuals or organizations that undertook the work, may be collected and made available to other states.

(5.3) States Needing Assistance in Managing Election Administration Should Be Aided: Election equipment based on computer technology is constantly being updated by vendors. The proliferation of differing equipment, particularly in states where each local jurisdiction may choose its own system, creates a problem of lack of expertise within local administrations. This was seen in Florida in 2002, as significant delays and resulting consternation by voters occurred as DRE equipment was used for the first time in certain large counties. Public confidence was put at risk. The same type of situation may occur in New York state, as counties and cities, having used mechanical lever machines for many decades, begin to employ unfamiliar computer-based voting systems. States may not have the resources to properly assist all their local jurisdictions with implementation and maintenance. This problem may be particularly apparent on election day, when temporary poll workers, given only minimal training, may have to set up and ensure operability of newly acquired units.

A study should be carried out to determine the extent of the shortfall in capability in local jurisdictions throughout the nation. The results of this study could be used as a basis to request, from Congress, a continuing program managed by the EAC, of grants-in-aid to states.

The establishment of a grants program that may be applied for competitively by states would be valuable, also. The competition would foster new proposals to improve election administration. A program involving competitive selection is widely used by other agencies, such as National Science Foundation and National Institutes of Health.

(5.4) To Fully Understand the US Election System, Data Collection Must Be Increased: The EAC needs to undertake additional data collection to achieve a more complete understanding of all of the facets of public elections. It is certainly true that the EAC has undertaken more data collection than has ever been done previously, but that only indicates the low level of the process before the creation of the commission.

For example, in the July 2001 report of the Caltech/MIT Voting Technology Project entitled *Voting: What Is, What Could Be*, it was stated that there were no official data available on the costs of carrying out US elections. The total expenditures were relatively small compared to other local government outlays and the category of elections was not identified among those considered by the US Bureau of the Census in its studies of local government.

The EAC should work with the US Bureau of the Census to arrive at a set of questions that can be included in the Census of Governments survey undertaken by that agency. Furthermore, if the EAC is not achieving sufficient cooperation from states and local governments in responses, it should request the Congress to make responses mandatory.

(5.5) The EAC Should Specifically Address the Issue of Public Confidence: There is an undercurrent of distrust among the general public about the process of carrying out elections. This attitude may have its sources in any one or all of the following:

- * the administrative disaster of the 2000 Presidential election in Florida,
- * the widely publicized revelations of computer security flaws,
- * the incorrect belief that hacking of the Internet applies to computers in elections,
- * the belief that failures of voting machines on election day is indicative of fraud,
- * the belief that “deadwood” on voter registration roles is being used fraudulently to pack the vote totals of a candidate,
- * the belief that changes to a computer program so that it will be caused to limit a recount to only the single contest being recounted, as required by law, is indicative of fraud,
- * the assumption that a highly partisan statement by the CEO of a major election equipment vendor indicates that he has ordered his machines to be fixed for his party, and
- * that a public sampling of the opinions of a few voters in the course of an “exit poll” that had different results from the complete results of an entire state is similarly proof of fraud.

The EAC cannot change the views of citizens whose minds are made up, regardless of the facts, but it can hold hearings, so that groups of citizens with contrary views can feel that they are being heard. In addition, the EAC could also present the views of researchers who have determined the facts of particular situations and can squelch rumors and counter incorrect interpretations of events. The EAC should identify a programmatic function of this type. When a particularly controversial incident occurs in an election, the EAC should be prepared to allow various views to be publicly presented, to clear the air. It may be that valuable recommendations to correct problems will be presented, even by persons whose interpretations of events are different from the majority.

(5.6) The Use of Pre-Scored Punchcard Ballots Must Be Ended, By Law If Necessary: The type of ballot that caused much of the difficulty in the 2000 Florida Presidential election was still used in the 2004 general election by about 12% of US voters. This is a disgraceful fact, considering what is known about a voting system using these ballots. Poorly educated voters and racial minorities cannot use these ballots to get their choices recorded as well as other voters, as statistical analyses have clearly shown, and votes cast are likely to be ambiguous due to the condition of retained chad. There is nothing in HAVA at present that explicitly bans the use of these ballots. They can form an audit trail, even if the votes cast on them are indecipherable or have been cast in ballot locations not corresponding to any candidate. New VVSG may include human factors values that would preclude the use of these ballots, but no state is required to adopt the VVSG.

If these ballots continue to be used in the 2006 general election, HAVA should be amended to require elimination of their use before the 2008 general election.

(5.7) Partisanship in Election Administration Prevents a Level Playing Field: A topic too important to ignore, yet one that cannot be dealt with by the EAC or possibly even by amendments to HAVA, is the partisanship that exists in election administration at the highest levels in some states. The United States is unusual among nations of the world, in that it does not have a national independent agency to carry out federal elections. We have a decentralized system in which elections are undertaken by our 50 states and the District of Columbia. Most other democratic nations have a centralized organization, often non-partisan or multi-partisan. Unlike despotic nations, the United States government does not arrest or harass the opposition, does not deny the opposition access to electronic media, does not confiscate the opposition's newspapers, and has no law under which it is unlawful to "defame" the government or the head of state. Nevertheless, partisanship at the highest levels of state authority has contributed to the unease of many about the fairness of US elections. It is one more item to add to the sources of lack of confidence that were enumerated above.

In 2000, the Florida Secretary of State was also the co-chair of her party's state effort for a Presidential candidate. Overtly partisan decisions were made in the post-election legal contest. In each Florida county, the three-person Canvassing Board was generally partisan, and the opposite decisions made on the same question by Democrat-controlled and Republican-controlled Canvassing Boards demonstrated the effect of the tilt. In 2004, the Ohio Secretary of State was also the co-chair his party's state effort for a Presidential candidate. Overtly partisan decisions were made just before and during election day.

We are very fortunate that Congress designed the EAC and its two advisory committees to be scrupulously bi-partisan. Let us work together towards that design for administration in each state.