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The Help America Vote Act and Election Administration: Overview and Issues

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Summary

The deadlocked November 2000 presidential election focused national attention on previously obscure details of election administration. Even before the U.S. Supreme Court had resolved the election in December, numerous bills to address the failings of the election system were introduced in Congress and state legislatures. The response at the federal level was the Help America Vote Act (HAVA; P.L. 107-252), enacted in 2002. HAVA created the Election Assistance Commission (EAC), established a set of election administration requirements, and provided federal funding, but did not supplant state and local control over election administration. Several issues have arisen or persisted in the years since HAVA was enacted. This report provides background information about HAVA and its provisions, the EAC, funding for the agency and for state programs to improve elections, and a number of enduring election administration issues.

Some observers have criticized the EAC for being too obtrusive, or for being slow, ineffectual, or even unnecessary. Others believe that the agency is an important resource for improving the administration of elections and has been hampered by budgetary constraints and difficulties in the nomination process for commissioners. The agency was without commissioners from December 2011 to January 2015, when one Democratic and two Republican commissioners were sworn in. They had previously been confirmed by the Senate on December 16, 2014. Another Democrat has been nominated to the fourth seat on the commission.

HAVA promoted the use of electronic voting systems to address problems associated with lever and punchcard systems and to facilitate voting by persons with disabilities. However, the electronic systems, especially those that recorded votes directly into a computer's memory, raised concerns about security and reliability. In response, many states enacted requirements for voter-verifiable paper ballot records.

HAVA's limited voter-identification provisions, agreed to after considerable debate, did not resolve the controversy over whether more stringent identification requirements are needed to prevent voter fraud, or whether such requirements would create an unacceptable risk of disenfranchising legitimate voters. Finally, while HAVA's voter-registration requirement may have improved that process, some have subsequently argued that more automated registration systems are needed to make further improvements.

Altogether, more than \$3.5 billion of HAVA funds were appropriated through FY2014: about \$3.28 billion in election reform payments to states, \$185 million for the EAC and its programs, and \$130 million in accessibility payments to states, administered by the Department of Health and Human Services. Numerous bills to amend HAVA have been considered in Congress, but none have been enacted.

In the 114th Congress, H.R. 195 was reported by the Committee on House Administration on March 4, 2015; it would eliminate the EAC and transfer its functions to the Federal Election Commission. Similar legislation was introduced in the 113th and 112th Congresses, and one bill was passed in the House in the 112th Congress. Appropriations bills that passed in the House for FY2014 and FY2015 included no funds for the EAC, although funding was included in the final legislation. Other legislation introduced thus far includes bills that would make changes to a variety of election administration topics (see the "114th Congress" subsection of this report for bill details).

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The Help America Vote Act

Even before the 2000 presidential election had been resolved by the U.S. Supreme Court in December of that year, more than a dozen bills to reform the election process had been introduced in Congress. Legislative activity continued when the 107th Congress convened the following month, along with the release of various independent reports and studies on election reform. In December 2001, the House passed H.R. 3295, the Help America Vote Act. The Senate passed S. 565, the Martin Luther King, Jr. Equal Protection of Voting Rights Act, in early 2002, after adopting 40 amendments. Following conference negotiations, the compromise bill, the Help America Vote Act of 2002 (HAVA; P.L. 107-252), was enacted in October.

HAVA imposed a number of requirements on the states with respect to election administration, provided payments to the states to meet the new requirements, created a new independent agency, made changes to improve military and overseas voting, and authorized other election reform activities. Among its major provisions, HAVA did the following:

- created the Election Assistance Commission (EAC), an independent, bipartisan agency to carry out grant programs, provide for testing and certification of voting systems, study election issues, and assist election officials by issuing guidelines and other guidance for voting systems and implementation of the act's requirements;
- established a number of payment and grant programs to
 - help states meet the law's requirements;
 - replace punchcard and lever voting machines and make general election improvements;
 - promote accessibility in the electoral process;
 - promote student participation; and
 - support research and pilot programs;
- established requirements in the states to
 - provide a provisional ballot to a voter who is not on the registration list or whose registration is in question;
 - post a sample ballot and voter information at polling places on election day;
 - impose an identification standard for first-time voters who register by mail;
 - provide for voter error correction on voting systems used in federal elections;
 - provide for manual auditing of the voting system, alternative-language accessibility, and at least one machine per voting place that can provide disability access; and
 - create and maintain a computerized, verified statewide voter registration list;
- required the EAC to develop voting system guidelines for computer hardware and software for voluntary use by the states, and voluntary guidance to assist states in meeting HAVA requirements;
- left methods of implementation to the states and prohibited rulemaking by the EAC, leaving enforcement to the U.S. Attorney General while requiring states to establish grievance procedures; and
- amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to make improvements to voting procedures for members of the military and overseas citizens.

Although many bills have been introduced to amend HAVA since it became law, only a minor change has been enacted. The National Defense Authorization Act for 2010 made numerous amendments to UOCAVA and also amended HAVA to authorize appropriations to achieve compliance on the new military and overseas voting requirements. In general, local election officials (LEOs) have supported HAVA and its provisions, although some, such as the provisional ballot requirement, were initially controversial.¹

Voting Systems and Election Administration

While initial reactions after the 2000 election had tended to focus on technological fixes such as eliminating punchcard and lever voting machines, a consensus emerged subsequently that the issues, and the solutions needed, were more complex and often involved trade-offs among diverse goals. HAVA reflects those developments—it funded replacement of punchcard and lever systems but also broader improvements in election administration. But the act also stimulated controversy about issues ranging from the security of electronic voting systems to the role and even the continued existence of the EAC itself.

Voting Systems

Currently, most jurisdictions use one of two kinds of voting system:

- *optical scan*, in which voters mark choices on paper ballots by hand or machine and the ballots are read by an electronic counting device, or
- *direct recording electronic (DRE) systems*, in which voters mark choices via a computer interface and the voting machine records them directly to an electronic memory.

There is no consensus on whether any one technology is best. For example, DRE systems can provide high usability for voters and efficiency for vote counting, but many believe that they pose a greater security risk than optical scan systems. Use of both kinds of systems increased after the enactment of HAVA, and they are now used by 90% of voters. States have different practices and requirements. HAVA does not require any particular voting system, but it sets requirements that influence what systems election officials choose. Under HAVA, systems used in federal elections must provide for error correction by voters, manual auditing, accessibility, alternative languages, and error-rate standards. Systems must also maintain voter privacy and ballot confidentiality, and states must adopt uniform standards for what constitutes a vote on each system.

Voting technologies are provided to election administrators by private-sector companies. Variations in state and local requirements, the episodic nature of elections, the largely fixed customer base, and uncertain funding for improvements make the market unusually fragmented, uncertain, and resistant to innovation. Market consolidation since 2002 has led to a decrease in the number of vendors, and in 2008 the top four vendors controlled about 70% of the market. Further consolidation in 2010 led to the dissolution of the second-largest vendor, Premier Election Systems. The attempted acquisition of Premier's assets and customers by Election Systems & Software (ES&S), the company with the largest market share, raised antitrust concerns that led the Department of Justice to require a partial divestiture by ES&S.² Dominion Voting, a Canadian

¹ For more information about the views of LEOs, see CRS Report R41667, *How Local Election Officials View Election Reform: Results of Three National Surveys*, by Eric A. Fischer and Kevin J. Coleman.

² Department of Justice, "Justice Department Requires Key Divestiture in Election Systems & Software/Premier (continued...)"

firm, acquired the divested resources, and later acquired what was then the third-largest U.S. vendor, Sequoia Voting Systems.

While the entrance of Dominion into the U.S. market caused little debate, other attempted acquisitions and mergers involving foreign-owned companies have been more controversial, with concerns raised about foreign influence in U.S. elections. An earlier attempt involving Sequoia and a company with some ties to Venezuela was withdrawn following public outcry,³ and the 2012 acquisition by a Spanish enterprise of a Florida company that provides some election-related software also caused controversy.⁴

Electronic Voting Machine Controversy

HAVA's requirement for accessible voting systems (at least one per polling place) and other factors drove some states to adopt DREs, but controversy exists about the security of those systems. Some experts and advocates believe that the problem is serious enough to require that all voting systems produce paper ballots that can be verified by voters and that will serve as the official record of the votes for any recount. Others believe that other safeguards can make DREs sufficiently safe from tampering, that use of printed paper ballots would create too many problems, and that the controversy risks drawing attention away from the demonstrated utility of DREs in addressing problems of access to and usability of voting systems. HAVA requires a paper audit trail for the voting system, but not paper ballots. However, many states have instituted paper-ballot-trail requirements.

Several bills introduced in recent Congresses would have addressed this issue. Most would have required a specific design standard for paper ballots rather than setting a performance standard that can be met in different ways, which was the approach taken by HAVA with respect to voting system requirements. Proponents of paper ballots argue that a legislated design standard is the only way to ensure that voting systems exhibit the desired level of verifiability and security. Opponents argue that such a design standard freezes technology and stifles innovation, thereby precluding the development and implementation of technologies with superior levels of verifiability and security than is possible with current technology.⁵

Technology and Election Administration

The debate over DREs has been less pronounced in recent elections. However, as the use of information technology (IT) has become more widespread in American society,⁶ potential

(...continued)

Election Solutions Merger,” Press Release, March 8, 2010, <http://www.justice.gov/opa/pr/2010/March/10-at-235.html>.

³ Tim Golden, “U.S. Investigates Voting Machines’ Venezuela Ties,” *The New York Times*, October 29, 2006, <http://www.nytimes.com/2006/10/29/washington/29ballot.html?pagewanted=all>; Zachary A. Goldfarb, “Voting Machine Firm Denies Chavez Ties,” *The Washington Post*, October 31, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/30/AR2006103001224.html>; John McCormick, “Cook County’s Voting Machine Supplier for Sale,” *Chicago Tribune*, December 22, 2006, http://articles.chicagotribune.com/2006-12-22/news/0612220233_1_sequoia-and-smartmatic-foreign-ownership-voting-equipment.

⁴ Anthony Martin, “Digging Deeper into the 2012 Vote Count Controversy,” *Examiner.com*, April 12, 2012, <http://www.examiner.com/article/digging-deeper-into-the-2012-vote-count-controversy>.

⁵ See CRS Report RL33190, *The Direct Recording Electronic Voting Machine (DRE) Controversy: FAQs and Misperceptions*, by Eric A. Fischer and Kevin J. Coleman.

⁶ More than half of Americans now have smartphones or tablet computers (Russell Heimlich, “Device Ownership Over Time,” *Pew Research Center’s Internet & American Life Project*, November 14, 2013, <http://www.pewinternet.org/data-trend/mobile/device-ownership/>).

applications in the polling place and the election office have also increased beyond traditional uses such as electronic voting. This trend creates opportunities to improve the administration of elections in many ways, but it also raises security, cost-effectiveness, and other concerns.⁷

For example, the development of affordable laptop and tablet computers, and database software for them, has permitted the development of electronic pollbooks (EPBs). HAVA's requirement for computerized, interactive, statewide voter-registration lists has facilitated the adoption of EPBs, which can reduce voter waiting times, check-in problems, and errors. If the EPBs are connected electronically to a central registration database, they can expedite the use of alternative voting procedures, including voting centers, early voting, and same-day voter registration. They can also facilitate verification of a voter's identity.

However, the use of EPBs raises several unresolved issues, including a lack of actual data on performance and cost-effectiveness, the absence of accepted technical standards, and concerns about security and fraud prevention, especially for EPBs connected to remote computers via the Internet. Nevertheless, the January 2014 report of the Presidential Commission on Election Administration recommended that jurisdictions transition to EPBs.⁸ It also recommended other uses of IT, including adoption of online voter registration, integration and exchange of relevant data across intra- and inter-state databases, and electronic provision of ballots to military and overseas voters.

The report expressed concerns about the aging voting systems bought with HAVA funds. The useful life of a computer tends to be under 10 years, with private-sector and government organizations often using a 4-year life cycle for planning. Many of the electronic voting devices, ballot counters, and back-office systems in use are approaching or have already exceeded those projected lifespans, and there appear to be significant barriers to the development, certification, and acquisition of replacement systems.⁹

Federal Funding

A central issue has been the role of the federal government in addressing concerns about voting systems, particularly with respect to funding and standards. HAVA authorized \$3.86 billion in funding for programs to replace equipment, improve election administration, improve accessibility, recruit poll workers, and perform research and pilot studies. The amount appropriated by Congress thus far is \$3.59 billion. However, a proportion of the payments to states reportedly remains unexpended, and as a result, the most recent Administration budget requests have not included any additional funding for that program.

Election Assistance Commission

Before HAVA, federal activities relating to election administration were performed by the Office of Election Administration (OEA) of the Federal Election Commission (FEC). Other than the voluntary voting system standards, OEA performed clearinghouse functions and some administrative activities under the National Voter Registration Act (P.L. 103-31). HAVA replaced

⁷ A number of states have recognized these opportunities and concerns and have begun steps to address them. See, for example, National Conference of State Legislatures, "Elections Technology Project," *NCSL*, June 30, 2014.

⁸ Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations*, January 2014, <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

⁹ *Ibid.*, 62.

the OEA with the Election Assistance Commission (EAC, <http://www.eac.gov>), an independent, bipartisan federal agency. The act also established two boards, with broad-based state and local membership. The Standards Board was designed to have 55 state election officials and 55 local election officials. The Board of Advisors was designed to have 37 members representing various associations, such as the National Governors Association and National Association of State Election Directors, as well as the Justice Department, the Federal Voting Assistance Program at the Department of Defense, and a number of science and technology professionals recommended by U.S. House and Senate leadership. HAVA also established the Technical Guidelines Development Committee, chaired by the Director of the National Institute of Standards and Technology (NIST), to address aspects of voting system standards and certification. The statute also provides for technical support and participation by NIST (see <http://vote.nist.gov/>).

The EAC carries out grant programs, provides for testing and certification of voting systems, studies election issues, and issues voluntary guidelines for voting systems and guidance for the requirements in the act. The EAC has no rule-making authority (except for limited authority under the National Voter Registration Act of 1993, the “motor-voter” law) and does not enforce HAVA requirements. The act established two enforcement processes: the U.S. Attorney General may bring civil action with respect to HAVA requirements, and states, as a condition for receipt of funds, were required to establish administrative grievance procedures to handle complaints from individuals.

Efforts to Eliminate the EAC

At the time HAVA was being debated in Congress, there was some dispute about whether it should be a permanent agency. Some supporters contended that a permanent agency was necessary to ensure the fairness and integrity of federal elections, whereas opponents were concerned about a permanent federal role in what was historically a responsibility of state and local governments. The outcome of the debate was that HAVA authorized appropriations for the EAC for FY2003 through FY2005, but did not contain a sunset provision for the agency. Bills have been introduced both to reauthorize the EAC and to eliminate it, but none has been enacted. Since FY2005, the agency has continued to receive funding each year through the appropriations process, pursuant to its enabling authorization. The agency did not have any commissioners between December 2011 and January 2015, when three new commissioners were sworn in.

The Senate Committee on Rules and Administration held a hearing on two Democratic nominees and a Republican nominee to the EAC in June 2011, but no further action occurred in the 112th Congress.¹⁰ In the 113th Congress, the President sent the same two nominations for the vacant Democratic seats to the Senate on June 7, 2013,¹¹ and the Senate Committee on Rules and Administration held a hearing on the nominations on December 11, 2013.¹² The Senate Committee on Rules and Administration voted to report two Democratic nominees for EAC seats on April 9, 2014,¹³ and Senate Republicans recommended to the President two Republican

¹⁰ The hearing may be found at http://www.rules.senate.gov/public/index.cfm?p=CommitteeHearings&ContentRecord_id=81d15dac-e004-436b-bb54-2ab3aa933417&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=1983a2a8-4fc3-4062-a50e-7997351c154b&YearDisplay=2011.

¹¹ The White House press release may be found at <http://www.whitehouse.gov/the-press-office/2013/06/07/presidential-nominations-sent-senate-0>.

¹² The hearing may be found at http://www.rules.senate.gov/public/index.cfm?p=CommitteeHearings&ContentRecord_id=1f355e3b-3b70-4f72-95cc-bed1cae1f46e&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=1983a2a8-4fc3-4062-a50e-7997351c154b.

¹³ Kenneth P. Doyle, “Senate Rules Committee Advances EAC Nominations of Hicks and Perez,” *Bloomberg BNA* (continued...)

nominees on the same day.¹⁴ The President announced nominees for the two vacant Republican seats on the EAC on July 17, 2014,¹⁵ and sent the nominations to the Senate the same day.¹⁶

The Senate Committee on Rules and Administration held a hearing on the Republican nominations on September 10, 2014.¹⁷ One of the Democratic nominees withdrew on November 19, 2014, and a new nominee was announced the same day.¹⁸ A committee vote on the Republican nominations was scheduled for November 20, 2014, but was cancelled in the absence of a quorum. The committee subsequently voted to approve the Republican nominees and send the nominations to the Senate on December 4, 2014.¹⁹ The Senate voted to confirm the one Democratic and two Republican nominees on December 16, 2014;²⁰ the newly announced Democratic nominee awaits a hearing and a vote from the Senate Committee on Rules and Administration. The new EAC commissioners were sworn in on January 13, 2015.²¹ The term for Commissioner Christy McCormick expires on December 12, 2015, and the terms for Commissioners Thomas Hicks and Matthew Masterson expire on December 12, 2017.²²

Table I. Commissioners of the EAC Since Its Establishment

Commissioners	Years of Service
DeForest B. Soaries, Jr.	2003-2005
Ray Martinez, III	2003-2006
Paul S. DeGregorio	2003-2007
Gracia M. Hillman	2003-2010
Donetta L. Davidson	2005-2011
Rosemary E. Rodriguez	2007-2009
Caroline C. Hunter	2007-2008
Gineen Bresso	2008-2011

(...continued)

Money and Politics Report, April 10, 2014.

¹⁴ Kenneth P. Doyle, “Republicans Name Two for EAC Seats But Recommendations Not Yet Revealed,” *Bloomberg BNA Money and Politics Report*, April 11, 2014.

¹⁵ The White House, Office of the Press Secretary, “President Obama Announces More Key Administration Posts,” press release, July 17, 2014, <http://www.whitehouse.gov/the-press-office/2014/07/17/president-obama-announces-more-key-administration-posts-0>.

¹⁶ The White House, Office of the Press Secretary, “Presidential Nominations Sent to the Senate,” press release, July 17, 2014, <http://www.whitehouse.gov/the-press-office/2014/07/17/presidential-nominations-sent-senate>.

¹⁷ The hearing may be found at http://www.rules.senate.gov/public/index.cfm?p=CommitteeHearings&ContentRecord_id=aa458eab-3231-45c9-8abf-c50a3bebaaa5.

¹⁸ Kenneth P. Doyle, “Senate Rules Panel Fails to Vote on EAC; Long-Pending Nominees Remain in Limbo,” *Bloomberg BNA Money & Politics Report*, November 20, 2014.

¹⁹ Kenneth P. Doyle, “EAC Confirmations, Campaign Law Changes In Play but Doubtful as Congress Winds Down,” *Bloomberg BNA Money & Politics Report*, December 5, 2014.

²⁰ The confirmed nominees were Thomas Hicks (D), Matthew Masterson (R) and Christy McCormick (R); see Rick Hasen, *Election Law Blog*, “Breaking: Senate Confirms 3 Commissioners to the Election Assistance Commission,” <http://electionlawblog.org/?p=69221>.

²¹ U.S. Election Assistance Commission, “EAC Newslines,” press release, January 15, 2015.

²² “The U.S. Election Assistance Commission to be Fully Functional After Senate Confirms Three Commissioners,” *Election Administration Reports*, vol. 45, no. 1 (January 5, 2015), p. 1.

Commissioners	Years of Service
Thomas Hicks	2015-present
Matthew V. Masterson	2015-present
Christy A. McCormick	2015-present

Source: Election Assistance Commission, at http://www.eac.gov/about_the_eac/former_commissioners.aspx and http://www.eac.gov/about_the_eac/commissioners.aspx.

One of the agency’s prominent critics has been the National Association of Secretaries of State (NASS). In most states, the Secretary of State is the chief election official. NASS first called for elimination of the EAC in a 2005 resolution encouraging Congress “not to reauthorize or fund the EAC after the conclusion of the 2006 federal general election.”²³ The association reaffirmed the resolution at its July 20, 2010, summer conference.²⁴ Local election officials appear to be more supportive. Three surveys of local election officials taken in 2004, 2006, and 2008 all found that a majority of officials believed that the creation of the EAC was an advantage than believed it a disadvantage.²⁵

With respect to legislation regarding the EAC, in the 112th Congress, H.R. 3463 was passed in the House on December 1, 2011, on a 235-190 vote. The bill called for the termination of the EAC and would have transferred its functions to the Federal Election Commission (FEC), but it would not have affected the functions carried out under HAVA by NIST. No further action on the legislation followed. In the 113th Congress, the Committee on House Administration approved H.R. 1994 on a voice vote on June 4, 2013, and reported the bill on December 12, 2013.²⁶ The bill would have eliminated the EAC and transferred certain election administration functions to the FEC. In addition, two bills that would have reauthorized the EAC were introduced. In the 114th Congress, H.R. 195 would eliminate the EAC and transfer its functions to the FEC. It was ordered to be reported by the Committee on House Administration on a voice vote on March 4, 2015. An amendment was offered to reauthorize the agency through FY2020 and was defeated on a voice vote.

Standards and Requirements

In the 1980s, the FEC developed voluntary standards for computer-based voting systems. Most states have now adopted those standards, which were updated in 2002. HAVA codifies the development and regular updating of those standards, which it calls voluntary guidelines. The EAC issued draft guidelines for public comment in June 2005. The final version took effect in December 2007. A new, completely rewritten draft version was first released for public review in October 2007.²⁷ However, it has yet to be adopted, and no action can be taken on it by the EAC in the absence of a quorum of commissioners.

²³ The resolution may be found at http://electiondefensealliance.org/NASS_resolution_EAC.

²⁴ The resolution may be found at http://www.nass.org/index.php?option=com_content&view=article&id=87&Itemid=528.

²⁵ CRS Report R41667, *How Local Election Officials View Election Reform: Results of Three National Surveys*, by Eric A. Fischer and Kevin J. Coleman. The surveys were taken subsequent to the 2004, 2006, and 2008 elections. On average half of the officials found the EAC an advantage and one in six a disadvantage. The remainder were neutral.

²⁶ H.Rept. 113-293.

²⁷ See CRS Report RS21156, *Federal Voting Systems Standards and Guidelines: Congressional Deliberations*, by Eric A. Fischer; and CRS Report RL33146, *Federal Voluntary Voting System Guidelines: Summary and Analysis of Issues*, by Eric A. Fischer.

HAVA also establishes federal requirements for voting systems, registration, provisional ballots, and other aspects of election administration. It leaves the methods of implementation to the states but requires the EAC to issue voluntary guidance.²⁸

Voter Identification

The Help America Vote Act requires that certain voters who had registered by mail present a form of identification from a list specified in the act. States vary greatly in what identification they require voters to present, ranging from nothing beyond the federal requirement to photographic identification for all voters. A number of states enacted laws in recent years to require photo ID to vote, which resulted in a series of state court challenges and rulings.²⁹ In the 109th Congress, the House passed legislation to require photo identification and proof of citizenship when voting in federal elections, but no further action followed. The U.S. Supreme Court has upheld an Indiana statute requiring photo identification for voting.³⁰ The degree of restrictiveness and kinds of identification accepted have been controversial in some cases, with debate focusing on the degree to which voter fraud is a significant issue that such ID requirements can address, and the proper balance between protecting against such fraud and minimizing the risk that otherwise qualified voters would be disenfranchised by the requirements.

Voter Registration

With the passage of HAVA, Congress attempted to address voter registration problems by requiring computerization and integration of voter registration systems and placing primary responsibility at the state level of government. That requirement went into effect in January 2006. The absence of a clear national standard for the HAVA-required statewide systems has led to uncertainties about how states should develop them and even whether states will be able to meet the requirements. Given the problems some states have had, the increase in new-voter registration in recent elections, and recent closely contested presidential elections, issues associated with voter registration systems have become more prominent. Among them are questions about the integrity and accuracy of the statewide systems, the validity of new registrations, concerns about various kinds of fraud and abuse, and the impacts of attempts to challenge the validity of voters' registrations at polling places. Prior to HAVA's enactment, the last major voter registration measure was adopted nearly 20 years earlier with the passage of the National Voter Registration Act of 1993 (NVRA, P.L. 103-31).³¹

²⁸ See CRS Report RL32685, *Election Reform: The Help America Vote Act and Issues for Congress*, by Eric A. Fischer and Kevin J. Coleman.

²⁹ See CRS Report R42806, *Voter Identification Requirements: Background and Legal Issues*, by Kevin J. Coleman, Eric A. Fischer, and L. Paige Whitaker.

³⁰ See CRS Report RS22882, *The Constitutionality of Requiring Photo Identification for Voting: An Analysis of Crawford v. Marion County Election Board*, by L. Paige Whitaker.

³¹ See CRS Report R40609, *The National Voter Registration Act of 1993: History, Implementation, and Effects*, by Royce Crocker.

Voting by Members of the Uniformed Services and Overseas Voters

Members of the uniformed services and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA; P.L. 99-410) of 1986. The law is administered by the Secretary of Defense, who delegates that responsibility to the director of the Federal Voting Assistance Program at the Department of Defense (DOD). The law was amended following the 2000 presidential election because of controversy surrounding ballots received in Florida from uniformed services and overseas voters. Both the National Defense Authorization Act for FY2002 (P.L. 107-107) and the Help America Vote Act (P.L. 107-252) included various provisions concerning uniformed services and overseas voting. Minor revisions to the law were made again in 2005 and 2007. In the 111th Congress, a major overhaul of UOCAVA was approved when the President signed the National Defense Authorization Act for FY2010 (P.L. 111-84) on October 28. It included an amendment (S.Amdt. 1764) that contained the provisions of S. 1415, the Military and Overseas Voter Empowerment Act. Most of the provisions of the MOVE Act were in effect for the 2010 election.³² For a discussion of current legislation related to uniformed services and overseas voting, see the “Legislative Action” section of this report.

Voting Rights Act³³

The Voting Rights Act of 1965 (VRA, P.L. 89-110) is a landmark federal law enacted to remove race-based restrictions on voting. The VRA was successfully challenged in a June 2013 case decided by the U.S. Supreme Court in *Shelby County, Alabama v. Holder*. The suit challenged the constitutionality of Sections 4 and 5 of the VRA, under which certain jurisdictions with a history of racial discrimination in voting—mostly in the South—were required to “pre-clear” changes to the election process with the Justice Department (the U.S. Attorney General) or the U.S. District Court for the District of Columbia. The pre-clearance provision (Section 5) was based on a formula (Section 4) that considered voting practices and patterns in 1964, 1968, or 1972. At issue in *Shelby County* was whether Congress exceeded its constitutional authority when it reauthorized the VRA in 2006—with the existing formula—thereby infringing on the rights of the states. In its ruling, the Court struck down Section 4 as outdated and not “grounded in current conditions.” As a consequence, Section 5 is intact, but inoperable, unless or until Congress prescribes a new Section 4 formula. Two identical bills were introduced in the 113th Congress that would have amended the VRA to add a new coverage formula. Similar legislation has been introduced in the 114th Congress (H.R. 885).

Funding Under the Help America Vote Act

States and territories were eligible to receive \$2.3 billion in federal requirements payments under HAVA, once each jurisdiction had published a “state plan” in the *Federal Register*, followed by a

³² See CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues*, by Kevin J. Coleman.

³³ See CRS Report R42482, *Congressional Redistricting and the Voting Rights Act: A Legal Overview*, by L. Paige Whitaker, CRS Report R43626, *The Voting Rights Act of 1965: Background and Overview*, by Kevin J. Coleman, and CRS Report R42831, *Congressional Redistricting: An Overview*, by Royce Crocker.

45-day public comment period and the filing of a certification with the EAC. The state plans were published on March 24, 2004. The \$2.3 billion included funds appropriated in FY2003 and FY2004, which could not be allocated until establishment of the EAC and publication of the state plans. The EAC distributed all of that funding to states by December 2005; no additional funding for requirements payments was appropriated until FY2008, when \$115 million was appropriated. An additional \$100 million was appropriated for FY2009. Payments have been distributed to states and territories to meet the new HAVA requirements and can be used for general election administration improvements once the requirements have been met.

HAVA established the following payment and grant programs (see **Table 2** for authorized and appropriated amounts).

- *Election Administration Improvements.* Provided expedited, one-time formula payments for general election administration improvements to states that applied, with a \$5 million minimum combined payment per state for this and the replacement program (see next paragraph). Administered by General Services Administration (GSA). (§101.)
- *Replacement of Punchcard and Lever Machine Systems.* Provided expedited, one-time formula payments to replace punchcard systems and lever machines in qualifying states, with a \$5 million minimum combined payment per state for this and the improvements program, summarized above. Administered by GSA. (§102.)
- *Payments to Meet Election Requirements.* Provides annual formula payments to states to meet the act's requirements. Requires a 5% match and submission of a state plan. Administered by the Election Assistance Commission (EAC) created in the act. (§§251-258.)
- *Payments to Assure Accessibility.* Provides payments to states to make polling places accessible to persons with disabilities. Requires application. Administered by Department of Health and Human Services (HHS). (§§265-265.)
- *Payments for Protection and Advocacy Systems.* Provides payments to state protection and advocacy systems to ensure electoral participation by persons with disabilities. Requires application. Administered by HHS. (§§291-292.)
- *Grants for Research and Pilot Programs.* Provides grants for research to improve voting technology (§§271-273) and for pilot programs to test new voting technology (§§281-283). Requires application. Administered by EAC.
- *Student Programs.* Establishes three programs, one to recruit college students as poll workers (§§501-503), one to recruit high school students (§601), and one to provide grants for the National Student and Parent Mock Election (§§295-296).

Appropriations

FY2003

The FY2003 omnibus appropriations bill (H.J.Res. 2, H.Rept. 108-10, P.L. 108-7), signed into law on February 20, 2003, contained \$1.5 billion for election reform programs authorized by HAVA, including \$650 million combined for the election administration improvement and voting system replacement payments to be administered by GSA (with no specific allocation designated for either program and a maximum of \$500,000 for administrative costs). GSA disbursed all of these funds to states in June 2003. All states and territories received payments for election

administration improvements, based on a formula using each state's voting-age population, and payments to replace punch card and lever voting systems were made to all states that applied. Also included was \$830 million for requirements payments (with a maximum of 0.1% to be paid to any territory), and \$20 million for other programs—\$13 million for accessibility payments, \$2 million for protection and advocacy programs, \$1.5 million each for the college and high school programs, and \$2 million for the EAC. P.L. 108-7 also included a \$15 million appropriation to GSA for one-time payments to certain states that had obtained optical scan or electronic voting systems prior to the November 2000 election.

FY2004

The President's budget request for FY2004 included \$500 million, one-half the amount authorized, to fund EAC requirements payments and administration. No funds were specifically requested for the other programs described above. The final omnibus appropriations bill, H.R. 2673, signed into law on January 23, 2004 (P.L. 108-199), contained just over \$1.5 billion for election reform, including \$1.0 billion for requirements payments, \$500 million for election reform programs, \$10 million for accessibility payments, \$5 million for protection and advocacy systems, and \$1.2 million for the EAC.

FY2005

For FY2005, the President's budget request included \$65 million for election reform, of which \$40 million was additional funding for requirements payments and \$10 million was for EAC administrative expenses. The request also included \$5 million for protection and advocacy programs and \$10 million for accessibility payments. The omnibus appropriations bill for FY2005, H.R. 4818, was signed into law on December 8, 2004, and included \$14 million for the EAC, of which \$2.8 million was to be transferred to NIST, and \$15 million for disability voting access, with \$5 million of that amount to apply to protection and advocacy systems. Also included was \$200,000 for the student parent mock election program and \$200,000 for the Help America Vote College Program.

FY2006

The President's FY2006 budget request included \$17.6 million for the EAC (of which \$2.8 million is for NIST), as well as \$5 million for protection and advocacy programs and \$9.9 million for accessibility payments administered by HHS. The final appropriation (P.L. 109-115) contained \$14.2 million, including \$2.8 million for NIST, with \$13.5 million and \$8.6 million, respectively, for the HHS programs, and \$250,000 "encouraged" to be spent on the Help America Vote College Program.

FY2007

The FY2007 request included \$16.9 million for the EAC (\$5 million for NIST), \$4.83 million for protection and advocacy programs, and \$10.89 million for accessibility payments administered by HHS. The 109th Congress adjourned without enacting an appropriations measure, providing instead temporary funding until February 15, 2007, via a continuing resolution (H.J.Res. 102). Continued funding through September 30 for FY2007 was subsequently provided via another continuing resolution, H.J.Res. 20, which was signed by the President on February 15 (P.L. 110-5). It provided \$16.24 million for the EAC, of which \$4.95 million was for NIST, \$4.83 million for protection and advocacy programs, and \$10.89 million for disability access.

FY2008

The FY2008 request included \$15.5 million for the EAC (\$3.25 million for NIST), and \$4.83 million for protection and advocacy programs and \$10.89 million for accessibility payments administered by HHS. From the start of FY2008 until December 31, 2007, continued funding for the EAC was provided by a series of continuing resolutions. Ultimately, FY2008 funding was provided by the Consolidated Appropriations Act for 2008, enacted on December 16, 2007 (P.L. 110-161). It provided \$16.53 million for the EAC, of which \$3.25 million is for NIST, and \$200,000 is for the student and parent mock election program. It also provided \$115 million for requirements payments, \$10 million for data collection grants to selected states, \$4.83 million for protection and advocacy programs, and \$12.37 million for disability access.

FY2009

The FY2009 request included \$16.68 million for the EAC (with \$4 million for NIST), as well as \$5.26 million for protection and advocacy programs and \$12.15 million for accessibility payments administered by HHS. The FY2009 appropriations were provided initially in a continuing resolution (P.L. 110-329), which provided the same funding levels as FY2008, and then in an omnibus bill (P.L. 111-8) that was passed on March 11, 2009. The omnibus provided \$18 million for the EAC, with \$4 million of that to be transferred to NIST, \$750,000 for the College Program, and \$300,000 for the high school mock election program. It also provided funding for requirements payments to the states in the amount of \$100 million, with an additional \$5 million for grants for research on voting technology improvements and \$1 million for a pilot program for grants to states and localities to test voting systems before and after elections. Finally, the omnibus provided \$12.2 million for disability access and \$5.3 million for protection and advocacy programs.

FY2010

For FY2010, the President's budget request included \$16.5 million for the Election Assistance Commission (EAC) and \$106 million for election reform payments to states, with \$5.26 million for protection and advocacy programs and \$12.15 million for accessibility payments administered by HHS, as in FY2009. The House and Senate bills (H.R. 3170, S. 1432) would have provided about the same amount for the EAC. The House bill would have provided nearly the same amount for election payments, while the Senate bill called for \$52 million in election payments. The Consolidated Appropriations Act, 2010 (P.L. 111-117), that was signed into law on December 16, 2009, includes \$18.0 million for the EAC, of which \$3.5 million is to be transferred to NIST, \$750,000 is for the Help America Vote College Program, and \$300,000 is for a competitive grant program to support student and parent mock elections. It also includes \$75 million for election reform programs, with \$70 million of that amount for requirements payments, \$3 million for research grants to improve voting technology with respect to disability access, and \$2 million for grants to states and localities for voting system logic and accuracy testing. Also, the omnibus provided \$12.15 million for disability access and \$5.26 million for protection and advocacy programs.

FY2011

For FY2011, the President's budget request included \$16.8 million for the EAC, of which \$3.25 million is to be transferred to NIST. It also included \$5.26 million for protection and advocacy programs and \$12.15 million for accessibility payments administered by HHS. It included EAC "election reform grants" among programs to be terminated, and therefore provided no funding for

requirements payments, research and pilot program grants, the college program, and mock elections. As justification, it pointed out that about \$1 billion in EAC payments to states remained unspent, and claimed that states had accrued \$763 million in interest on previously appropriated payments. The EAC, in contrast, listed accrued interest through 2008 as totaling \$279 million. The cause of this discrepancy is not clear. Funding for federal agencies, including the EAC, was provided at FY2010 levels according to a series of seven continuing resolutions between September 30, 2010, and April 15, 2011. On that date, a continuing resolution was enacted to fund the federal government for the rest of the fiscal year. H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, provided \$16.3 million for the EAC, of which \$3.25 million is to be transferred to NIST. It provides no new funding for election reform programs.

FY2012

For FY2012, the President's budget request included \$13.7 million for the EAC, of which \$3.25 million was to be transferred to NIST, resulting in a 23% reduction in operating funds for the EAC from the FY2011 request and a 28% reduction from the FY2010 appropriation. The budget request also included no funding for the HAVA-authorized protection and advocacy programs and accessibility payments administered by HHS. P.L. 112-74 provided \$11.5 million for the EAC, of which \$2.75 million was for NIST and \$1.25 million was for the Office of the Inspector General.

FY2013

For FY2013, the President's budget request included \$11.5 million for the EAC, of which \$2.75 million was to be transferred to NIST and \$1.3 million was for the Office of the Inspector General. Funding was provided under a continuing resolution, P.L. 112-175, until March 2013, when it was superseded by P.L. 113-6, the Consolidated and Further Continuing Appropriations Act, 2013. Under the President's sequester order, appropriations under the law were reduced for all federal agencies, although the specific amounts of the reductions are not known. The House and Senate reports for FY2014 appropriations for Financial Services and General Government both note that the FY2013 appropriation for the EAC was \$11.5 million before the sequester reduction.

FY2014

For FY2014, the President's budget request included \$11.0 million for the EAC, of which \$2.75 million of that amount was to be transferred to NIST for its work on testing guidelines for voting system hardware and software. The House Committee on Appropriations recommended eliminating the EAC and provided no funding for the agency; the Senate Committee on Appropriations would have provided \$11.0 million for the EAC, with \$2.75 million to be transferred to NIST. The Consolidated Appropriations Act of 2014 (H.R. 3547) provided \$10.0 million for the EAC, including \$1.9 million for NIST.

FY2015

For FY2015, the President's budget request included \$10.0 million for the EAC, with \$1.9 million of that amount to be transferred to NIST for its work on testing guidelines for voting system hardware and software. The House Committee on Appropriations recommended eliminating the EAC and provided no funding for the agency in H.R. 5016, which passed the House on July 16, 2014. Funding for the EAC was provided in Consolidated and Further

Continuing Appropriations Act of 2015 (H.R. 83), which included \$10.0 million, of which \$1.9 million is for NIST.

Table 2. Help America Vote Act (HAVA) Funding
(\$ millions)

Budget Item	HAVA Auth. ^a	Appropriations													
		2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013 ^b	2014	2015	Total
Payments to States															
Election Administration Improvement	325														650
Punchcard/Lever Machine Replacement	325	650 ^c													
HAVA Requirements	3,000	830	1,498				115	100	70						2,613
One-Time Payment ^d		15													15
<i>Total Payments^e</i>	<i>3,650</i>	<i>1,495</i>	<i>1,498</i>				<i>115</i>	<i>100</i>	<i>70</i>						<i>3,278</i>
Election Assistance Commission (EAC)															
General ^f	30.00	2.00	2.00	10.71	11.29	11.29	23.08 ^g	14.00	13.41	13.02	7.50	7.50	8.10	8.10	130.3
NIST				2.78	2.77	4.95	3.25	4.00	3.50	3.24	2.75	2.75	1.90	1.90	33.79
College Program	5.00 ^h	1.50	0.75	0.20	0.00 ⁱ			0.80	0.75	n/a	n/a	n/a			4.00
High School Program	5.00 ^h	1.50	0.75												2.25
Mock Election	0.20 ^h		0.20	0.20			0.20	0.30	0.30	n/a	n/a	n/a			1.20
Research	20.00							5.00	3.00						5.00
Pilot Programs	10.00							1.00	2.00						1.00
Inspector General											1.25	1.25			2.50
<i>Total EAC</i>	<i>70.20</i>									<i>16.27</i>	<i>11.50</i>	<i>11.50</i>	<i>10.00</i>	<i>10.00</i>	<i>185.04</i>
		<i>5.00</i>	<i>3.70</i>	<i>13.88</i>	<i>14.06</i>	<i>16.24</i>	<i>26.53</i>	<i>25.10</i>	<i>22.96</i>						
Health and Human Services (HHS)															
Accessibility	100.00	13.00	10.00	10.00	10.90	10.90	12.40	12.20	12.15	n/a	n/a	n/a	n/a		91.55

Budget Item	HAVA Auth. ^a	Appropriations													Total
		2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013 ^b	2014	2015	
Protection and Advocacy	40.00 ^h	2.00	5.00	4.96	4.83	4.83	5.35	5.30	5.26	n/a	5.24	n/a	n/a	37.52	
Total HHS	140.00	15.00	15.00	14.96	15.73	15.73	17.75	17.50	17.41	n/a	n/a	n/a	n/a	129.08	
Total HAVA	3,860	1,515	1,517	29	30	32	159	143	110	16	15	10	10	10	3,592

Source: CRS, from HAVA and relevant appropriations acts.

Notes: All figures are in millions of current (nominal) dollars of budget authority as authorized or appropriated and are rounded where necessary. Figures for FY2005 and FY2006 include rescissions. n/a means that specific information was not available for that fiscal year. The EAC was authorized in HAVA for FY2003-FY2005 and has been reauthorized through the appropriations process on a year-to-year basis since then.

- a. Authorization amounts in HAVA.
- b. Amounts do not include sequester reductions (see text).
- c. Appropriated amount did not specify the distribution of funds between the two budget items.
- d. For payments to states that had obtained optical scan or DRE voting systems prior to the November 2000 election. The funds were appropriated in the General Government and Appropriations Act of 2003, whereas payments to states authorized under HAVA were appropriated in the Miscellaneous Appropriations Act of 2003; both acts were included as divisions of the FY2003 omnibus appropriations act, P.L. 108-7.
- e. The total payment appropriated includes the one-time payment in FY2003 and is therefore \$15 million greater than the total appropriated from funds authorized by HAVA. See note c.
- f. Figures in this row are funds remaining in EAC line items after amounts for other specific items (such as NIST) are subtracted.
- g. This includes \$10 million for grants of \$2 million each to five states to improve the collection of election data.
- h. Listed amounts plus sums necessary for subsequent years beyond the initial authorization period.
- i. Congress appropriated no funds for this in FY2006 but “encouraged” the EAC to spend \$250,000 on it.

Legislative Action

112th Congress

The Subcommittee on Elections of the Committee on House Administration held a hearing on April 14, 2011, on H.R. 672. The full committee marked up the bill on May 25, when it approved an amendment in the nature of a substitute, and passed the bill on a voice vote. The bill was reported on June 2 (H.Rept. 112-100) and scheduled for a floor vote. The House took up H.R. 672 on June 21 under suspension of the rules. On June 22, a vote on the motion to suspend the rules and pass the bill failed on a strict party-line vote of 235 to 187, with 9 not voting. The measure needed a two-thirds majority for passage.

H.R. 3463 was introduced on November 17, 2011, and was nearly identical to H.R. 672. It would have eliminated the EAC and also included a provision to terminate taxpayer financing of presidential election campaigns. The bill was referred to the Committee on House Administration and the Committee on Ways and Means. The bill was taken up by the House on December 1 under a closed rule and passed on a 235 to 190 vote. The Senate took no action.

113th Congress

In the 113th Congress, two bills were introduced to eliminate the EAC and two were introduced to reauthorize the agency. Representative Harper introduced both bills to eliminate the EAC: H.R. 260 and H.R. 1994. H.R. 260 would have terminated the program that provides taxpayer financing of presidential elections (a related bill that terminated public funding of presidential nominating conventions, H.R. 2019, was signed into law on April 3, 2014), terminated the EAC and its Standards Board and Board of Advisors, transferred election administration functions to the FEC, and established a Guidelines Review Board to review voluntary voting system guidelines. H.R. 1994 would have terminated the EAC, its Standards Board, and Board of Advisors, and transferred its election administration functions to the FEC; it was passed by the House Administration Committee on a voice vote on June 4, 2013. No further action was taken on the bill.

On election administration issues, two omnibus bills were introduced that included numerous provisions that would have made changes to the voting process.

A number of bills included provisions aimed at reducing long voter lines on Election Day.

Other election administration bills would have required changes regarding voter registration; photo identification; mail voting; military and overseas voting; and other areas. Two bills would have amended the Voting Rights Act to prescribe a new coverage formula.

The Senate Committee on Rules and Administration heard testimony on S. 58 and S. 85 (to reduce long voter lines) at a hearing on March 12, 2014.³⁴ The committee reported two bills, S. 1728 (which would have made changes to military and overseas voting) and S. 1937 (which would have required states to develop contingency plans in the event that an election is disrupted by unexpected emergencies or natural disasters), on April 10, 2014. S. 1728 was reported with an amendment in the nature of a substitute. No further action occurred on either bill.

³⁴ The hearing may be found at http://www.rules.senate.gov/public/index.cfm?p=CommitteeHearings&ContentRecord_id=66b1be3d-d5f8-4bc4-9abe-be2b773a1621.

114th Congress

Voting and elections bills introduced in the 114th Congress include those that would

- make numerous changes to the voting process (H.R. 12);
- direct the EAC to provide pilot program funds for local initiatives to provide 12th graders with voter registration information (H.R. 126);
- terminate the EAC and transfer certain election administration functions to the Federal Election Commission (H.R. 195);
- require early voting and measures to prevent unreasonable waiting times at polling places in federal elections (H.R. 411);
- direct the Bureau of Prisons to provide voting information to federal prisoners upon their release from prison (H.R. 871);
- amend the Voting Rights Act of 1965 to add a new coverage formula for determining which states and political subdivisions are subject to Section 4 (H.R. 885);
- amend the National Voter Registration Act of 1993 (NVRA) to permit a state to require a voter who uses the federal mail voter registration form to provide evidence of citizenship (H.R. 951);
- secure the federal voting rights of persons when released from incarceration (H.R. 1459, H.R. 1556, S. 772);
- prohibit certain state election officials from actively participating in electoral campaigns (H.R. 1617);
- allow all eligible voters to vote by mail in federal elections (H.R. 1618);
- amend NVRA to require an applicant for voter registration to affirm eligibility and to require a state to verify eligibility before registering the applicant (H.R. 2392);
- amend NVRA to require voter registration applicants to affirm their eligibility and for states to verify that eligibility before registering the applicant (H.R. 2392);
- require U.S. House and Senate candidates to run in an open primary election and limit the general election to the two candidates who received the greatest number of votes in the primary (H.R. 2655);
- make voting by an illegal alien an aggravated felony and deportable offense (S. 68);
- establish a remedial plan to minimize voter waiting times in states where a substantial number of voters waited more than 30 minutes to vote in the November 6, 2012, election (S. 212);
- secure the federal voting rights of non-violent persons upon release from incarceration (S. 457);
- provide for voter registration through the Internet (S. 1088); and
- amend the Help America Vote Act to require same day registration (S. 1139).

The Committee on House Administration favorably reported H.R. 195 on March 4, 2015, on a voice vote. At the markup, an amendment to reauthorize the agency through FY2020 was defeated.

Concluding Observations

Several of the issues discussed herein are likely to continue to be relevant with respect to HAVA, particularly funding for programs to support election administration activities in the states. No funds for election administration programs have been appropriated since FY2010. Future appropriations seem unlikely until all previously appropriated HAVA funds have been expended; available funds for some states have not yet been disbursed by the EAC.³⁵

The EAC did not have any commissioners for a period of time between December 2011 and January 2015. The Senate approved nominations for three of the four commissioner seats on December 16, 2014, and the new commissioners were sworn in on January 13, 2015. Tasks that require commissioner approval, such as adopting revisions to HAVA guidance and voting system guidelines, holding public hearings, and issuing new advisory opinions, have resumed.

Legislation to either eliminate or reauthorize the EAC was introduced in the 112th and 113th Congresses. Legislation to eliminate the agency was again introduced in the 114th Congress and was reported by the Committee on House Administration on March 4, 2015. The EAC has been criticized by some for exceeding its authority, or for being slow, ineffectual, or even unnecessary. Others believe that the agency is a necessary federal resource for improving election administration and has been hampered by budgetary constraints and difficulties in the nomination process for commissioners.

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³⁵ As noted at the EAC commissioners meeting on February 24, 2015, at <http://www.yorkmedia.com/eac/webcasts.htm>.