

REVISED FINAL D R A F T
For review by the EAC's Advisory Boards

influenced turnout in 2004.²⁶ The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.²⁷

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.²⁸ Table 3 below shows predicted probabilities (calculated from the probit coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.²⁹

²⁶ The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

²⁷ The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

²⁸ A probit model is a popular specification of a generalized linear regression model, using the probit link function.

²⁹ In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

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Table 3. Predicted probability of voter turnout – all voters		
	Maximum requirement	Minimum requirement
State name	91.7%	91.5%
Sign name	89.9%	90.2%
Match signature	Not significant	Not significant
Non-photo ID	89.0%	89.0%
Photo ID	88.8%	----
Affidavit	---	87.5%
Total difference from “state name” to “photo ID” or “affidavit”	2.9%	4.0%
N	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.³⁰ In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

³⁰ The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

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Race and ethnicity have generated particular interest in the debate over voter ID requirements.³¹ The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

Varying voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

³¹ Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

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In the aggregate data, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names.

The signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names. That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*).. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the

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only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.³² Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL

³² Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

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2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Developments since 2004

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Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

Answering these questions would provide the information needed for more informed judgment in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at

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the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

Conclusions

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased.³³

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents

³³ In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.



Bert A. Benavides/EAC/GOV
05/26/2006 02:02 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Gracia
cc Amie J. Sherrill/EAC/GOV@EAC, Adam
Ambrogio/EAC/GOV@EAC, Sheila A.
Banks/EAC/GOV@EAC, Elieen L. Coliver/EAC/GOV@EAC,
bcc

Subject Agenda for Comm. Staff Briefing 5-30-06

**Commissioners' Staff Briefing, Tuesday, 5-30-06
9:30 AM - 11:30 AM EST, Small Conference Room**

CONFERENCE CALL IN # 1-866-222-9044, Passcode 63114

Tuesday, 5-30-06

- All Commissioners are expected to participate .
 - Executive Director Wilkey participating via teleconference .
1. Testimony, House Admn Hearing (Julie) Matls distributed 5-25

Proposed Agenda - Thursday, 6-01-06

- All Commissioners are expected to participate .
1. Resolutions - Bd of Advisors/Std.Bd. (TBD) Matl to be determined
 2. TGDC /Voting System Issues (Brian H) No materials
 3. Eagleton Voter ID Study (KLD) Matls distributed 5-17
 4. Eagleton Social Security SOW (KLD) Matls distributed 5-16
 5. Weekly Project Report (Tom) Matls to be distributed

Bert A. Benavides
Special Assistant to Executive Director Thomas Wilkey
U. S. Elections Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
202.566.3114 direct line
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026918



Bert A. Benavides/EAC/GOV
05/31/2006 09:13 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Gracia
cc Tamar Nedzar/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC,
Sheila A. Banks/EAC/GOV@EAC, Elieen L.
bcc

Subject Agenda for Comm. Staff Briefing 6-01-06

**Commissioners' Staff Briefing, Thursday, 6-01-06
9:30 AM - 11:30 AM EST, Small Conference Room**

AGENDA

● **All Commissioners are participating .**

- | | |
|---|--|
| 1. Resolutions - Bd of Advisors/Std.Bd. | Matls distributed 5-31(see below for copy) |
| 2. TGDC /Voting System Issues (Brian H) | No materials |
| 3. Eagleton Voter ID Study (KLD) | Matls distributed 5-31by KLD/Tamar |
| 4. Social Security SOW (KLD) | Matls distributed 5-31by KLD/Tamar |

RESOLUTIONS - Agenda Item #1

From Adam:



2006Executive Board Recommendations(Final).doc

From DeGregorio: Attached are all but one of the resolutions passed by the Board of Advisors at their recent meeting. JR Harding introduced a resolution at the last minute regarding EAC website access for people with disabilities. It was passed but we don't have a copy of the final version. Please note that the 3 resolutions from Cameron Quinn are a work in progress, as they designated the resolutions committee to add the whereases.



5.24.06 Resolutions submitted by JR Harding and Jim Elekes.doc



5.24.06 Resolutions submitted by Cameron Quinn.doc



5.24.06 Resolutions submitted by Chris Nelson.doc



5.24.06 Resolutions submitted by Doug Lewis.doc

PROPOSED AGENDA, Tuesday, June 6

● **Commissioners' participation tbd .**

- | | |
|--|-------------------------------|
| 1. House Comm. Admn. Hearing (Tom/Julie) | Matls to be determined |
| 2. Financial Report (Tom) | Report to be distributed 6-05 |

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026820

Margaret Sims/EAC/GOV
03/13/2007 02:31 PM

To Jeannie Layson/EAC/GOV@EAC
cc ddavidson@eac.gov, jthompson@eac.gov, twilkey@eac.gov
bcc
Subject Re: Voter ID, Fraud & Intimidation--Need your input 

Looks fine to me. Of course, she is probably referring to our decision not to release the consultants' draft final report. --- Peggy

Jeannie Layson/EAC/GOV

03/13/2007 02:25 PM

To jthompson@eac.gov, twilkey@eac.gov, psims@eac.gov, ddavidson@eac.gov
cc
Subject Voter ID, Fraud & Intimidation--Need your input

Hello all,

A columnist from the WaPo has asked for info about both the voter ID and the fraud and intimidation reports. This was prompted by the accusation that the president was concerned that the fired prosecutors were not aggressively pursuing voter fraud cases. She had heard that we were refusing to release this information, so I am trying to demonstrate otherwise, as well as show that we have discussed these projects numerous times in public meetings. Please take a look at my draft email to her and let me know if you have any suggestions. She needs to hear back from me by 4 p.m. Thanks for your help with this.

Ms. Cocco,

Per your questions, go [here](#) to view the testimony regarding voter ID from our Feb. 2 public meeting. As I mentioned, at this meeting EAC Chair Donetta Davidson requested that staff review the initial research provided by Eagleton and produce a final report, which would include recommendations for further study on this subject. Currently, staff is working to finalize the voter ID report.

Regarding the voter fraud and intimidation research, at a May 2006 public meeting of our Standards Board and Board of Advisors, the EAC project manager for this research presented a staff update on the project. Go [here](#) to view the agenda, page 3. The document you referred to was the update the project manager gave at this public meeting, and it has been made available to anyone who asked for it. The final culmination of this project can be found [here](#), and links to the attachments provided by the consultants are available by going to page 24 of this report. The commissioners adopted this report at a [public meeting in](#)

026821

Dec. 2006.

As a small agency of 23 employees, including the four commissioners, it is necessary for the agency to contract with consultants to gather the initial data for these projects. After EAC receives the initial data, the agency reviews the data for accuracy and then releases a final report.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Karen Lynn-Dyson/EAC/GOV
01/30/2007 05:03 PM

To "John Weingart"
<john.weingart@rutgers.edu>@GSAEXTERNAL
cc
bcc Donetta L. Davidson/EAC/GOV
Subject Re: February 8th EAC meeting

John-

At the present, I envision my role will merely be to provide a chronology of the project and to provide a context to what has happened with the project and the reports, thus far.

All of the Commissioners will have read your final June 28, 2006 report on Voter Identification and will be addressing their questions to the material contained in that 32 page report and the appendices.

When, or if, I get additional information on the substance of the meeting I'll be certain to pass that information along.

Regards-

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

"John Weingart" <john.weingart@rutgers.edu>



"John Weingart"
<john.weingart@rutgers.edu>

01/30/2007 04:55 PM

To "Karen Lynn-Dyson" <klynndyson@eac.gov>
cc
Subject February 8th EAC meeting

Karen - I understand you will be a panelist on the Eagleton/Moritz Voter ID study along with Tom O'Neill and Tim Vercellotti at next Thursday's EAC meeting. Could you let us know what you will be covering so we prepare comments that will not be redundant.

Thanks. I hope your new year is off to a good start.

John

--

-- John Weingart, Associate Director
Eagleton Institute of Politics
(732)932-9384, x.290

026823

Juliet E. Hodgkins/EAC/GOV
11/17/2006 09:40 AM

To Gracia Hillman/EAC/GOV@EAC, Paul
DeGregorio/EAC/GOV@EAC, "Davidson, Donetta"
<ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC
cc Elieen L. Collver/EAC/GOV@EAC, Sheila A.
Banks/EAC/GOV@EAC, Matthew
Masterson/EAC/GOV@EAC
bcc
Subject Meeting regarding draft voter fraud and intimidation report

Commissioners & Tom,

After checking all of your schedules, it appears that Wednesday, Nov. 29 in the morning is available for everyone. Let's set 10:30 as the time. I will reserve the small conference room. Will anyone other than Donetta be calling in?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

026824

Jeannie Layson/EAC/GOV

11/28/2006 10:27 AM

To EAC Personnel

cc

bcc

Subject FOIA Request

History:

 This message has been replied to:

Hello everyone,

I need each of you to respond affirmatively or negatively to the FOIA request below. If you have no documents in your possession related to this request, please reply to me with the words "no records." If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.

I need this information and/or a response by COB December 5, 2006. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

Wendy Weiser of the Brennan Center for Justice has submitted a FOIA request for the voting fraud report prepared by our consultants and the voter ID report, as well as the following information:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

Please let me know if you would like a copy of the FOIA request.

Jeannie Layson
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Suite 1100
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Phone: 202-566-3100
www.eac.gov



Elieen L. Collver/EAC/GOV
10/17/2006 05:06 PM

To Donetta L. Davidson/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: NEED APPROVAL: Brennen Cen. letter 

History:  This message has been replied to

by the way, i forwarded the commissioner's staff meeting materials to Trudie's aol account so you can print them out.

Elle L.K Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov
Donetta L. Davidson/EAC/GOV

Donetta L.
Davidson/EAC/GOV
10/17/2006 04:57 PM

To "Elle Collver" <ecollver@eac.gov>
cc
Subject Fw: NEED APPROVAL: Brennen Cen. letter

Here is the time that I can do the phone call

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Donetta L. Davidson
Sent: 10/17/2006 03:54 PM
To: Jeannie Layson
Subject: Re: NEED APPROVAL: Brennen Cen. letter

Jeannie. My appointments are at 9 20 - 12 00 - 2 00. I could call him tomorrow at 9 DC time or about 6 DC time.
Let me know if that works.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Jeannie Layson
Sent: 10/17/2006 10:06 AM

026825

To: Paul DeGregorio; Gracia Hillman; Donetta Davidson
Cc: Thomas Wilkey; Margaret Sims; Karen Lynn-Dyson; Juliet Hodgkins; Gavin Gilmour; Bryan Whitener
Subject: NEED APPROVAL: Brennen Cen. letter

Commissioners,

I have not received input from everyone regarding the attached letter. It is a response to Wendy Weiser of the Brennan Center, who requested the staff voter fraud status report and the provisional voting draft report, both of which were presented to the Standards Bd. and the Bd. of Adv. at the May meeting. She also requested the draft voter ID report, which was not released at the May meeting. If possible, I'd like to get your input by the end of the day. The letter would go out under Tom's signature. Thank you.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov



"Todd Rokita"

06/02/2006 09:38 PM

To d davidson@eac.gov

cc trokita@eac.gov sokeson@eac.gov

bcc

Subject FW: Voter ID Law

History

This message has been forwarded.

Donetta--- this is the person to whom the EAC is paying taxpayer money to perform dispassionate research on voter fraud? No wonder she has concluded for all of us that voter fraud (in person) really does not exist, except for maybe a few isolated places in the Midwest. If her report sees the light of day, I can almost guaranty problems. The fact that the report may have a co-writer does not solve this problem. She should not even be paid. There is a clear agenda behind her conclusions. I believe the credibility of the EAC is in question with your decision to hire this person and allow her to report on behalf of the EAC on either election fraud or voter intimidation. I would like a response from the Chairman that addresses this article. Thanks

Rumble in the Desert

Civil rights groups are challenging Arizona's Prop 200, which endangers voting rights for citizens.

Tova Andrew Wang

June 01, 2006

Article created by The Century Foundation.

Without a lot of fanfare, a very important lawsuit was filed last week by the Lawyers Committee for Civil Rights and other groups in Arizona. Finally, two years after the passage of the quite pernicious Prop 200, groups are finally taking serious action to combat it.

Basically an anti-immigrant measure, Prop 200 set out a bunch of restrictions on access to services for immigrants. However, with respect to voting rights, Prop 200 set up a situation blocking the right to vote for many *citizens* by requiring every person registering to vote to prove citizenship.

As the Lawyer's Committee describes it, Proposition 200 requires that that counties reject any voter registration application that does not include satisfactory proof of citizenship, such as a copy of the applicant's birth certificate, passport, a driver's license or non-operating identification license, but only if issued after October 1, 1996, a tribal identification card or naturalization documents. This even applies to voters who must re-register simply because they moved across county lines.

This measure is at least as damaging as many of the voter identification laws being passed and contemplated across the country. This stops someone from being part of the

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process before they've even gotten to square one. As I have repeatedly discussed with respect to ID laws, many voters are unlikely to have the required documentation and efforts to obtain the documentation will take time and money, therefore amounting to an unconstitutional poll tax.

Ironically, it has proven to be eligible voters who have been caught in the snare of this act. Last year in Maricopa County, home to Phoenix, more than 10,000 people trying to register were rejected for being unable to prove their citizenship. A spokeswoman for the recorder's office said most are probably U.S. citizens whose married names differ from the ones on their birth certificates or who have lost documentation. In Pima County, home to Tucson, 60 percent of those who tried to register initially could not. The elections chief said that all appeared to be U.S. citizens, but many had moved to Arizona recently and couldn't get their birth certificates or passports.

Moreover, Prop 200 is based on the idea that noncitizens are coming to the polling place and voting illegally. The premise is false. There is no evidence of any number of immigrants knowingly voting in the past in Arizona, and certainly it would seem unlikely when the last thing immigrants want to do in these times is draw official attention to themselves.

Finally, as the lawsuit persuasively argues, the measure also makes it virtually impossible for groups to conduct voter registration drives in Arizona. How many people go to the supermarket with their birth certificate?

The recent decision in Indiana upholding its draconian ID bill and the intolerance toward immigrants being displayed right now makes me worry about how the Arizona courts will respond. They upheld the Proposition in another context once before. But anyone who cares about the right to vote—for qualified, U.S. citizens—should hope that the law is struck down as the unconstitutional and anti-democratic measure it is.

Tova Andrea Wang is Democracy Fellow at The Century Foundation.

David R. Maxwell

Campaign Assistant

Todd Rokita

Secretary of State Reelection Campaign

47 South Meridian Street, Suite 200

Indianapolis, Indiana 46204

Direct: [REDACTED]

Mobile: [REDACTED]

[REDACTED]

Bryan Whitener/EAC/GOV
05/10/2007 05:45 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc
Subject FYI - Today's media inquiries (5-10-07, Thurs)

Commissioners:

Today we had the following media inquiries:

(1) Leslie Robinson, a reporter for the news blog, ColoradoConfidential.com inquired about the rules and regulations that EAC board members must adhere to. She said that one of the EAC members from Colorado, Dan Kopelman, has recently been cited by the Secretary of State for his business of selling voter lists and consulting partisan candidates. She asked if these infractions cause Kopelman to withdraw from the EAC board. We explained that, according to SEC. 213 of the Help America Vote Act of 2002 (HAVA), there are two EAC Standards Board representatives from each state, that one is a local official, one is a state official and that both individuals represent their state on the Board. We said that the state representatives are selected by the Chief State election official from each state. We said that, with respect to Colorado, Mr. Kopelman was selected to serve on the Board by Colorado Secretary of State Michael Coffman. We suggested Ms. Robinson contact their office for questions regarding the appointment of state representatives from Colorado.

(2) Rose Marie Berger, Associate Editor of Sojourners/Call to Renewal, asked for the document on voter fraud authored by Tova Wang and Job Serebrov. We replied that our Inspector General is currently reviewing the circumstances surrounding this research and noted page two of the following memo from the chair. We said that when that process is complete we'll be glad to discuss it further. 04/16/07 - EAC Requests Review of Voter ID, Vote Fraud & Voter Intimidation Research Projects

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Bryan Whitener/EAC/GOV
05/11/2007 06:18 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc

Subject FYI - Today's media inquiries (5-11-07, Frid)

Commissioners:

Today we had the following media inquiries:

(1) Meg Cox, a freelance journalist in Chicago is working on an article about voter fraud and voter ID laws. She asked the following two questions:

- 1) Is the EAC still sending its "Elections Crimes" report to journalists who request the report on voter fraud and intimidation authored by Wang and Serebrov?
- 2) If the answer to #1 is yes, is the EAC still sending the "Election Crimes" report in these cases without comment--in other words, without indicating that it is not the Wang/Serebrov report?

We forwarded her questions to Curtis and replied to Ms. Cox that the chair has asked our Inspector General to review the circumstances surrounding this research project, as well as research done about voter ID. We said he has requested that EAC not comment on either one of these projects while his review is ongoing. We referred her to the following link: [here](#). and said we'd be glad to make sure she receives the IG's review when it is completed.

(2) Jenna Portnoy of the Doylestown Intelligencia in Bucks Co., PA called again to ask about EAC's progress in determining the status of Pennsylvania's 102 funds. She wants to know the amount of money, if any, that they will have to return. We said that EAC is still reviewing the certifications submitted by the states and we hope to have this process completed as soon as possible. We said we are also evaluating all the reports submitted by the states regarding their 101 and 251 funds expenditures.

026829

Bryan Whitener/EAC/GOV
05/14/2007 06:18 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc

Subject FYI - Today's media inquiries (5-14-07, Mon)

Commissioners:

Today Meg Cox, a freelance journalist in Chicago, sent us the same two questions she sent us last Friday (see below). She had not been satisfied with our response. She is working on an article about voter fraud and voter ID laws. She said she is concerned that journalists are receiving a substitute report from EAC and not the real thing. We replied that we directed her to the one and only report adopted by EAC -- Election Crimes: An Initial Review and Recommendations for Future Study -- We noted that it contains clear language about the role of the consultants, identifies them by name and that their bios are included in the EAC report as Appendix D here. We said we would notify her when the IG has completed his review of this subject. We also noted the following contents of the report:

- Page one: "EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes.
- Page three: To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang, who worked with EAC staff and interns to conduct the research that forms the basis of this report.
- Page four: The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

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BACKGROUND: Last Friday's Q&A.

Meg Cox, a freelance journalist in Chicago is working on an article about voter fraud and voter ID laws. She asked the following two questions:

- 1) Is the EAC still sending its "Elections Crimes" report to journalists who request the report on voter fraud and intimidation authored by Wang and Serebrov?
- 2) If the answer to #1 is yes, is the EAC still sending the "Election Crimes" report in these cases without comment--in other words, without indicating that it is not the Wang/Serebrov report?

We forwarded her questions to Curtis and replied to Ms. Cox that the chair has asked our Inspector General to review the circumstances surrounding this research project, as well as research done about voter ID. We said he has requested that EAC not comment on either one of these projects while his review is ongoing. We referred her to the following link: here. and said we'd be glad to make sure she receives the IG's review when it is completed.

026830

Juliet E. Hodgkins/EAC/GOV
05/02/2007 05:16 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Rosemary E. Rodriguez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Eileen L. Collver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, "Fabre, Stacie" <[REDACTED]@eac.gov>, Stephanie

bcc

Subject: Feinstein and Durbin letter

Commissioners and Tom,

There are several questions in the Feinstein and Durbin letter that I need your assistance responding to. Particularly, I need your responses as to question 1 for both the Voter ID study (page 4 -- numbered at the top) and Voting Fraud and Intimidation (page 5 -- numbered at the top). While these two questions actually say the same exact thing, I believe that the question under Voter ID was intended to refer to the Voter ID study and not the Voting Fraud and Voter Intimidation Study.

In addition, please look at questions 5 and 9 under Voting Fraud and Voter Intimidation. Each of these questions require information and documents that you may have. Last, if you have any input on the response to Question 10 under Voting Fraud and Voter Intimidation, please let me know.

I am currently working on the response and anticipate working on it tomorrow and Friday. I would appreciate any information that you may have.



Feinstein and Durbin letter.pdf

Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

026831

United States Senate
WASHINGTON, DC 20510

April 12, 2007

The Honorable Donetta Davidson
Chairman
U.S. Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, DC 20005

Dear Commissioner Davidson:

We are writing to seek a response to very troubling news reports that included allegations that the Commission may have altered or delayed release of two taxpayer-funded studies of election issues for political purposes.

While the Commission is within its rights to decide what guidance it issues to election officials, it is critical that its actions are not perceived as politically motivated and it is imperative that you provide full documentation about the Commission's proceedings on these matters.

On Wednesday, the *New York Times* reported that a bipartisan team of election law experts hired by the Commission to research voter fraud in federal elections found that there was little such fraud around the nation, but the Commission revised the report to say that the pervasiveness of voter fraud was still open to debate.

On Monday, *Roll Call* reported that the Commission two weeks ago rejected the findings of a report, prepared as part of a \$560,000 contract with Rutgers University's Eagleton Institute and Ohio State University's Moritz College of Law. That report found that voter identification laws may reduce election turnout, especially by minorities.

026832

Commissioner Davidson

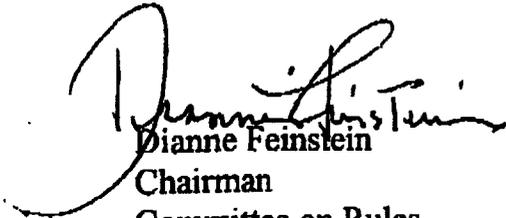
- 2 -

April 12, 2007

It is imperative that the Commission's actions and deliberations are unbiased, free from political influence and transparent. While the Commission does not have to agree with the experts who perform its research, it should make the research available unfettered and unfiltered.

Attached are a series of questions, we would like the Commission to address. We look forward to your timely response.

Sincerely,



Dianne Feinstein
Chairman
Committee on Rules
and Administration



Richard J. Durbin
Chairman
Subcommittee on Financial
Services and General
Government
Committee on Appropriations

We request information and documentation from the Commission that answer the following questions:

COMMISSION'S OVERSIGHT ON EAGLETON CONTRACT TO PERFORM A STUDY ON VOTER IDENTIFICATION

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Would you please provide a copy of the approved Request For Proposals, as well as any contract modifications that were agreed to between the Commission and Eagleton Institute and subcontractors?
3. Can you provide the names and qualifications of Election Assistance Commission staff that worked on the Eagleton Institute project?
4. Please indicate how many project meetings occurred during the term of the Eagleton contract, including in-person meetings, conference calls regarding the status of the report, and any meeting where Commissioners were present for at least part of the meeting. Please provide copies of any minutes from those meetings.
5. Please identify the names and affiliations of members of the Peer Review group or groups that examined the Eagleton Institute drafts. Please also indicate the dates upon which any such review of the Eagleton research was conducted, and the specific concerns or complaints that were raised by members of the Peer Review group as to either the analysis or statistical methodology, if any. Please provide copies of any minutes from those meetings.
6. If certain members of the Peer Review groups had concerns with the data or methodology of the Eagleton study, was that information communicated to Eagleton, and were any changes made to the study based on Peer Review group concerns with methodology or data?
7. Who were the individuals (and what were their academic qualifications) that advised the Commission that the data, methodology, or the results of the Eagleton Contract were so flawed that the Commission should reject the report? At what point did the Commission receive input from those individuals?

8. The Commission previewed its research on the Eagleton Institute's study on Provisional Voting at its May 2006 Advisory Board meetings—why was the Voter Identification Draft Study not discussed at that time? What is the status of the Provisional Voting report?
9. In rejecting the Eagleton report, the Commission indicated concerns that there was only one year's worth of data. Given that this was the first year that Commission had studied the results, isn't "one year" what was originally contemplated in the Eagleton contract? Isn't the reason for having a major research institute conduct this study is so they can draw initial assessments from that data—even though that data can be augmented in future years? Because of the rejected report, will the Commission start anew for research in the 2008 elections?
10. What was the final, total cost of the Eagleton contract, and what was produced or released by that Commission as a result of that contract?

COMMISSION'S OVERSIGHT OVER VOTER FRAUD/INTIMIDATION STUDY

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Given the bipartisan nature of the Working Group that guided the Voter Fraud/Intimidation report, and the bipartisan nature of the contracted experts who uniformly support the results of this report, what concerns lead the Commission to determine the report should not be released?
3. If there were points in the report that the Commission objected to, were there attempts to work with the contractors to deal with specific concerns? If there were such attempts, please describe them.

4. Who drafted the Commission summary (released in December, 2006) of the Voter Fraud/Intimidation report, and what were their credentials and involvement in the original research process? Were there instructions or guidance given from Commissioners or senior staff as to what portions of the research should be emphasized? Who at the Commission reviewed the summarized report? Since the contracted experts are referred to in the Commission's released report, were the contractors allowed a chance to review or edit that Commission's final report that was released in December, 2006?
5. Please provide copies of any electronic or written communications between Commission employees that relate to the editing of the Voter Fraud/Intimidation report.
6. Please explain what Mr. Job Serebrov was referring to in his email referenced in the *New York Times* article of April 11, 2007. Please provide any documents in the Commission's possession where employees or contracted experts discussed pressure, political sensitivities, or the failure of the Commission to adopt the Voter Fraud/Intimidation report from March 1, 2006 to present.
7. While we realize that the Commission voted to release its summary report in December 2006, was there a public vote taken to reject the Draft Voter Fraud/Intimidation report? Such a monumental decision to reject the contract experts' work is a policy decision, and one that should be done in public. When was the decision made to reject the original report, and what notice was provided to the public that the Commission would reject that report?
8. Prior to the Draft Voter Fraud/Intimidation report's release, had other organizations requested a copy of that original report? Please include copies of your responses to those organizations, if any.
9. Had any States requested that the Commission or staff provide guidance related to voter identification requirements in the Help America Vote Act, or identification requirements generally? Please provide those requests, and any responses from the Commission.
10. Please indicate what steps the Commission is taking to ensure that political considerations do not impact the agency's research and that decisions are handled in a public and transparent manner.

Jeannie Layson/EAC/GOV

04/27/2007 04:54 PM

To EAC Personnel

cc

bcc

Subject Voter ID and Vote Fraud and Voter Intimidation IG Review Update

Hello everyone,

The chair wanted to distribute the attached memo from the IG, which contains guidance about how we proceed during the review of the voter ID and the vote fraud and voter intimidation research projects. She will continue to keep staff informed as this review moves forward, and she thanks everyone for their continued cooperation and hard work.



IG Memo to Chair on Review of Studies (4-27-07).pdf

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

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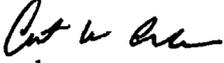


U.S. ELECTION ASSISTANCE COMMISSION
OFFICE OF INSPECTOR GENERAL
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

April 27, 2007

Memorandum

To: Donetta Davidson
Chair, U.S. Elections Commission

From: Curtis Crider 
Inspector General

Subject: U.S. Election Assistance Commission Activities Pending the Office of Inspector
General Investigation of the Voting Fraud and Voter Intimidation Report

In your letter of April 23, 2007, you requested my comments concerning several activities that the Election Assistance Commission (EAC) was considering to undertake pending our review of the Voting Fraud and Voter Intimidation Study and on related questions. My responses to your proposed activities and questions follow:

1. The EAC would like to prepare a summary of the differences between the draft report prepared by the consultants and the final report adopted by the EAC.

Answer: We believe that such a summary will be helpful to our investigation. Please provide us with a copy of the summary of differences upon its completion.

2. Would there be any prohibition against the Director of Communications speaking with EAC employees, consultants or working group members when questions arise from members of the press or under the Freedom of Information Act?

Answer: We are not aware of any prohibition. However, we suggest that EAC not comment or limit its comments on this matter because of the ongoing investigation. Any FOIA requests should be promptly responded to stating that the matter is under investigation. Once the investigation is completed, appropriate information should be made available to the FOIA requester.

3. Would there be any prohibition against EAC briefing members of the EAC Standards Board and the EAC Board of Advisors.

Answer: We are not aware of any prohibition. Our preference, however, would be that EAC allow the investigation to be completed before conducting any briefings.

4. Would there be any prohibition against gathering information related to this project in order to respond to inquiries that have been made by members of Congress?

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Answer: We are not aware of any prohibition. As previously stated, our preference is that there are no public comments while the investigation is in process or that comments be limited. However, we appreciate the sensitivity of Congressional requests, EAC must decide how best to proceed in this matter. We ask that you share any proposed responses with us prior to their release and that you provide us with a copy of final responses and any attachments.

5. Would there be any prohibition against responding to an inquiry that the Commission has received from an attorney engaged by one of the consultants?

Answer: It is the EAC's decision whether to respond to the attorney for the consultant. We prefer that the consultants not be released from the confidentiality clause of their contracts until the OIG has completed its investigations.

We understand that EAC will want to respond to criticism of its handling of the Voter Fraud and Intimidation Study, and that management must ultimately decide how best to proceed. Our preference would be that you attempt to defer commenting until we have finished our investigation.

I appreciate you raising these matters to me before acting. Please feel free to contact me if you have any questions about this memorandum.

Curtis Crider/EAC/GOV
04/23/2007 02:27 PM

To EAC Personnel
cc
bcc
Subject documentation for evaluation

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up- eacon@eac.gov. If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider
Office of Inspector General, Election Assistance Commission
Phone - (202) 566-3125
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

026840

Bryan Whitener/EAC/GOV
04/23/2007 11:25 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc

Subject CQ WEEKLY article today - Election Board Facing Votes of No Confidence

History: This message has been forwarded

Commissioners:

We just accessed the following article that appears today in Congressional Quarterly's CQ WEEKLY.



wr20070423-17election-cht.pdf

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Election Board Facing Votes of No Confidence

CQ WEEKLY - IN FOCUS
Congressional Quarterly
April 23, 2007 - Page 1164
By David Nather, CQ Staff

After the turmoil over the 2000 presidential election, Congress created a bipartisan commission that was supposed to do nice, non-controversial things: hand out some federal grants, do some studies, certify voting machines, promote voting practices that seem to work well.

Instead, the Election Assistance Commission is now surrounded by controversy and tough questions. And the same lawmakers who could barely be bothered to pay attention to its creation four years ago are putting it under the microscope now.

Democrats were enraged by the commission's handling of a report on voter fraud – the panel ordered up the report (which found little evidence of fraud), sat on the document for several months, then released a rewritten version that concluded “there is a great deal of debate” about how much voter fraud takes place. Republicans have contended that voter fraud is a big problem and benefits Democrats.

A second commission report on voter identification laws found that the laws can reduce turnout, particularly among Hispanics. The panel delayed releasing that report for months, then made it public even while refusing to endorse its conclusions.

Voting rights groups have criticized the commission's handling of the reports, and two powerful Democratic senators – Dianne Feinstein of California, who chairs the Rules and Administration Committee, and Majority Whip Richard J. Durbin of Illinois, who chairs the Appropriations subcommittee that funds the commission – have asked the panel to answer a barrage of questions. More than anything, they want to know whether the commission received “any outside communication or pressure” to delay or change the reports.

The controversy has put a harsh spotlight on the commission in recent weeks, but it's hardly the only case where the panel's actions have gotten it into trouble. Last year, the commission angered Arizona's secretary of state when it refused to grant the state permission to require voters to provide proof of citizenship when they registered by mail using federal forms. Secretary of State Jan Brewer, a

026841

Republican, called the decision “inexcusably wrong” because Arizona’s voters called for the requirement in Proposition 200 and because the Department of Justice had approved it.

On top of it all, secretaries of state have been suspicious of the commission all along, fearing that it would turn into yet another federal regulatory agency. The National Association of Secretaries of State called for the commission to be abolished after the 2006 election, since its three-year authorization expired at the end of fiscal 2005. New Hampshire Secretary of State William Gardner, a Democrat, urged the group to take that position because, he said, “I could see what could potentially be coming. . . . I remember when the Federal Election Commission was basically a clearinghouse as well.”

These are a lot of pressures for a four-member commission with a staff of 19 and an operating budget of just over \$11 million, which got so little attention from Congress that it took a year before its first four members won Senate confirmation. The commission also has strict limits on what it can do under the 2002 election overhaul law that created it. Among other things, it’s not supposed to be a regulatory agency – though it does have some authority under the National Voter Registration Act of 1993, the “motor voter” law that was at issue in the Arizona dispute.

‘We Took On Too Much’

Donetta L. Davidson, the Republican who in January became the commission’s third chairman, says she takes seriously the questions about the reports on voter fraud and voter identification. The commission has referred the issue to its own inspector general, asking him to take a hard look at the panel’s contracting procedures for outside research projects. “We want to be as transparent as possible,” Davidson said.

But Davidson, who was previously Colorado’s secretary of state, says the biggest problem was that the commission may have been trying to move too many reports with a small staff that mostly works with outside contractors rather than producing its own research. “I think that was our biggest mistake – being too aggressive,” she said. “We just took on too much.”

That explanation won’t quiet the criticism. House Majority Leader Steny H. Hoyer, a Maryland Democrat and one of the authors of the 2002 law, is concerned that the commission “may have mishandled taxpayer-financed reports” and has called for hearings, said spokeswoman Stacey Farnen Bernards. Feinstein’s committee already has an oversight hearing tentatively scheduled for June.

Voting rights groups are highly suspicious of the commission’s actions, though there is no evidence the administration interfered with the reports. Jonah Goldman, director of the Lawyers’ Committee for Civil Rights Under Law, said it “just seems a little too convenient that there’s no political motive” given that the administration reportedly fired some U.S. attorneys because they were not aggressive in prosecuting alleged voter fraud.

And even those who don’t subscribe to a political conspiracy find fault with the commission’s handling of the reports. “I think they’re just trying to avoid controversy, and trying to avoid controversy is not what we need right now,” said Richard L. Hasen, an election-law expert at Loyola Law School in Los Angeles. “With all the problems we’re having with elections in this country, we need bold leadership, and they’re not providing it.”

Congressional Alarm Bells

Davidson insists that the commission doesn’t shy away from controversial subjects. “That’s our job,” she said. Indeed, the law spells out a list of reports the commission is supposed to produce, and they touch on nearly every hot-button election issue imaginable: ballot designs, voter registration methods, recount procedures, the handling of misinformation about election times and locations, and even proposals to make Election Day a holiday.

Much of the commission’s other work is advice and testing of voting systems. In 2005, it published

guidelines that dealt with security issues, paper audit trails, and accommodations for voters with disabilities. And last year, it started testing and certifying voting systems in preparation for the 2008 election.

Still, the way the voter fraud and identification reports were handled and the possibility that the Justice Department influenced the reports have alarmed some members of Congress.

That issue won't be settled until the hearings have been held and the inspector general's office has issued its report. But the back story of one incident with the voter fraud report – in which two Justice officials secured changes to the summaries of their interviews for the report – suggests the department was more than a bystander in the voter fraud study.

In the appendix, which summarizes all of the expert interviews conducted for the fraud report, two Justice officials' interviews are included: Craig Donsanto, director of the Election Crimes Branch of the Public Integrity Section, and John Tanner, chief of the Civil Rights Division's Voting Section. In both cases, a footnote declares that "this interviewee did not agree with the consultants' interpretation of his interview comments" and that the commission made "clarifying edits." No such note accompanies any of the other expert interviews.

Donsanto got to see the summary of his interview because he was a technical adviser to the working group. He thought the summary erroneously implied that his unit didn't pursue systematic fraud schemes anymore, only individual cases like voting by felons and non-citizens. He worried that civil rights groups would think their constituencies were being singled out. Peggy Sims, an election research specialist at the commission who managed the project, agreed and had it changed.

Tanner took issue with the suggestion that he had said the Department of Justice wasn't pursuing voter-suppression cases anymore, and provided examples of cases where it was doing just that. His remarks were corrected.

Sims said that neither Donsanto nor Tanner got to weigh in on the entire report before it was released.

Such controversies are inevitable given that some lawmakers are worried about political influence on the commission and others are concerned it might grow too powerful. Elections are emotional, and even a bipartisan panel will have disagreements. When the four commissioners tried to revisit the Arizona decision, for instance, they deadlocked on party lines, something that also happens periodically to the bipartisan Federal Election Commission.

But the commission can go a long way, voting rights groups say, simply by operating with more transparency and establishing more written procedures for making decisions. "It is a relatively young agency," said Wendy R. Weiser of the Brennan Center for Justice at the New York University School of Law. "But they've been around long enough that this is no longer acceptable."

Davidson said more transparency and better procedures are her goals as well. "Definitely I hear what Congress is saying," she said. "We're a bipartisan commission, and we want to do the right thing." Now, in a year when lawmakers say they're trying to improve oversight, it's up to Congress to decide whether it is interested enough in its own creation to help the commissioners do the right thing.

FOR FURTHER READING: Voter fraud and U.S. attorneys, CQ Weekly, p. 968; commission's creation, 2003 CQ Weekly, p. 3059; election law (PL 107-252), 2002 Almanac, p. 14-3; motor-voter law (PL 103-31), 1993 Almanac, p. 199. Source: CQ Weekly. The definitive source for news about Congress.

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026843

Who's Who on the Commission

The Election Assistance Commission was created in 2002 to help states comply with federal rules and to set standards and distribute grants for voting equipment. Its members, two from each party, are nominated by the president and confirmed by the Senate to four-year terms that are renewable once.



Donetta L. Davidson (Republican) was appointed in 2005 and is the current chairwoman. She had been Colorado's secretary of state for six years and before that state elections director and a county clerk in suburban Denver. Her term expires in December.



Gracia M. Hillman (Democrat) is a longtime figure in the voting rights movement and a former executive director of the League of Women Voters. She was president of a Washington consulting company when appointed in 2003. Her term expired in 2005, but she is serving until a replacement is named.



Caroline C. Hunter (Republican) was deputy director of the White House Office of Public Liaison when President Bush appointed her in 2007. She is a former attorney for the Republican National Committee and ombudsman for the Bureau of Citizenship and Immigration Services. Her term expires in February 2011.



Rosemary E. Rodriguez (Democrat) was finishing her third year on the Denver City Council when she was appointed in 2007 to replace Ray Martinez, who resigned. She had previously been Denver's city clerk and director of boards and commissions for the mayor. Her term expires in December.

Jeannie Layson/EAC/GOV
04/17/2007 04:56 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC
cc EAC Staff

bcc

Subject Today's press inquiries (04-17-07)

1. I spoke with St. Louis editorial board members Christine Bertelson and Kevin Korrigan regarding an editorial that ran today, asserting that we'd worked on the vote fraud/voter intimidation study for five years, and that the administration/White House edited the report. I told them both of these assertions were false, and I requested a correction. I gave them the details about how this project was conceived and managed. I explained that the vote fraud and voter intimidation project began in Sept. 2004. As I said, the statement that this project had been five years in the making is incorrect -- that predates the creation of the EAC. Commissioners were appointed in Dec. 2003, and the agency's first year of operations was 2004 with a \$1.2 million operating budget. I said the assertion that the administration edited the document was false, and said that at no point in the process did the administration play any role. I also pointed out that the chair requested the IG to fully review the matter. They are going to run a correction. The editorial follows.

Snipe hunting in Jeff City

Tuesday, Apr. 17 2007

The Missouri Legislature's dogged efforts to crack down on voter fraud call to mind the hallowed tradition of the snipe hunt.

In a snipe hunt, gullible kids are taken out to the woods, handed sticks and gunny sacks and told to track down the elusive snipe. Meanwhile, their pals, who know a snipe is a bird of marsh and shore generally found nowhere near the woods, yuck it up.

Voter fraud is about as rare as snipe in most parts of the country, including Missouri. As evidence of that we have the testimony of (a) a five-year study by the federal Election Assistance Commission; (b) a report from the Missouri Secretary of State showing nobody in the state tried to vote with a fake I.D. in 2006; (c) Department of Justice statistics showing only 86 people were convicted of voter fraud-related crimes in the last five years, many of them on trivial errors; and (d) a federal judge's ruling last week that the justice department had failed to demonstrate that voter fraud had occurred in Missouri last year.

Undaunted by these facts, Republicans in the Legislature lurk about like Elmer Fudd with their gunny sacks and sticks, promoting bills to require voters to present photo identification before they're allowed to cast a ballot. They passed such a bill last year, but the courts threw it out as unfair to those who couldn't afford the cost and hassle involved in getting a photo I.D. card.

026845

This year's versions of the photo I.D. bills would allow voters without photo I.D. to cast "provisional ballots," which may or may not get counted. So, despite the fact that a photo I.D. requirement would disenfranchise many voters in the cause of solving a problem that doesn't exist, the Missouri House could pass such a bill this week.

Evidence continues to mount that the hunt master for the national voter I.D. snipe hunt is none other than Karl Rove, President George W. Bush's deputy chief of staff and political guru. As The New York Times suggested Sunday, "The more we learn about the White House purge of United States attorneys, the more a single thread runs through it: the Bush administration's campaign to transform the minor problem of voter fraud into a supposed national scourge."

Not only did the administration suggest that some of the eight fired prosecutors had been insufficiently aggressive in pursuing voter fraud cases, it changed the wording of the Election Assistance Commission's findings on the voter fraud issue. What originally read, "there is widespread but not unanimous agreement that there is little polling place fraud" became "there is a great deal of debate on the pervasiveness of fraud."

Moreover, the release of the commission's report was delayed for nine months, during which period eight states, including Missouri, dealt with voter I.D. laws. Since the 3 percent to 4 percent of the electorate who don't have photo I.D.s tend to be poor, disabled or elderly voters, suppressing their vote would tend to help Republican candidates.

Investigators looking for evidence of fraud need look no further than the e-mail messages emanating from Mr. Rove's offices. Alas, thousands, perhaps millions, of those messages are now "missing." Perhaps Attorney General Alberto Gonzales will shed some light on the problem when his testimony before the Senate Judiciary Committee is rescheduled. In the meantime, Missouri lawmakers should put down the sticks and gunny sacks and back slowly out of the woods before their constituents realize they've been snookered, too.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

026846

Bryan Whitener/EAC/GOV
04/19/2007 06:19 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc

Subject FYI - Today's media inquiries (4-19-07, Thurs)

Commissioners:

Jeannie issued the following media inquiries log for today:

(1) I asked Rick Hasen of Election Law Blog to please post info about our Spanish language glossary of election terms, and he did.

(2) Eliza Carney, National Journal columnist, interviewed the chair today about the recent challenges EAC has encountered. She asked about CIBER, and the chair explained the interim process, the way we modeled our interim process after NVLAP. Eliza wanted to know what EAC was doing to address some of the criticism, and the chair talked about the bipartisan subcommittees and her request to the IG. She said Rep. Hinchey told her the only reason we released the voter ID report was because he asked for it at a hearing. The chair pointed out that in Feb. she asked staff to bring the commission recommendations for wrapping it up w/n 30 days. She asked the chair about the voter fraud report, and the chair said staff reviewed it for accuracy, as we have a responsibility to do. I sent her background info on the history of certification and the voluntary nature of the guidelines and our certification program. She also asked for info about our budgets, and our employee cap, which I sent to her.

(3) David Nather of Congressional Quarterly interviewed the chair about how the agency is standing up against all of the recent criticism. She talked about the bipartisan subcommittees and the IG review request. She said if the IG identifies things that need to be changed, we'll change them. He had emails b/w Peggy and Craig Donsanto about discrepancies with his interview. Peggy talked with the reporter about the issue. She explained that she sat in on the interview, and that she agreed with Craig that they had gotten something wrong -- they stated that DOJ had moved from focusing on fraud conspiracies to individual cases. Peg and Craig agreed that what he'd said was that DOJ used to only focus on conspiracies, now they also focus on individual cases too. Peg said Craig learned of the inaccurate portrayal during his role as the technical advisor to the working group. She said none of the people interviewed were given the opportunity to review the summaries. Craig found out about his through the working group, and Tanner learned about his interview summary after the boards were briefed on the project in May. He asked me if we were finished with the following research projects: -- ballot designs, voter registration methods, recount procedures, misinformation about election times and locations, and proposals to make election day a holiday. I told him all of that research is underway. HAVA-mandated research that's been completed includes Election Crimes (vote fraud), the 2004 Uniformed and Overseas Citizens Absentee Voting Act Survey, and the 2003-2004 National Voter Registration Act Survey. We've also released the 2004 Election Day Survey. And we've issued a series of quick management start guides to election officials throughout the nation, addressing voting system security, introducing a new voting system, ballot preparation, and poll workers. Yesterday, the commission adopted the Spanish language glossary of election terms, the first project released under EAC's Language Accessibility Program, which consists of working groups comprised of local election officials, national advocacy groups and research and public policy organizations to advise the commission on how to best meet language accessibility requirements. Next we will translate the glossary in five Asian languages. We also are working on a Legal Resources Clearinghouse, which will be a web-based database containing statutes, regulations, rules, and fed. and state court decisions related to election administration. It will provide the public and election officials a central location to conduct election administration research. I pointed out to him that we have already met two of the biggest HAVA mandates -- VVSG and the certification program. He asked for the ages of all the commissioners, and I gave it him.

026847

(4) Philip Burrowes of Congressional Quarterly asked for photos of all commissioners and their length of terms which we provided. He also asked for the names of the members of Congress who made recommendations to the White House regarding appointments. We provided the text of HAVA regarding recommendations and said he would need to ask the White House for names.

(5) Marc Songini of Computer World had the following questions, and my responses follow.

A. Is the EAC doing enough to strengthen voluntary voting system guidelines and voting system certification? EAC, the National Institute of Science and Technology (NIST), and the Technical Guidelines Development Committee (TGDC) have already completed an initial update of the 2002 standards. First, it is important to note that these guidelines are voluntary, and it is up to states whether to adopt them. The 2005 guidelines update and augment the 2002 voting system standards, as required by HAVA, to address advancements in election practices and computer technologies. After December of this year, voting systems will no longer be tested against the 2002 standards. The major changes from 2002 to 2005 fall in the areas of accessibility and usability. The changes made to these sections include a usability section which was not in the 2002 standards and increase the number of accessibility requirements from 29 to 120 and increase language accessibility requirements. The 2005 guidelines also created greater security requirements based on the new technology used in the voting machines, increasing standards in the areas of data transmission and voter verification. The 2005 guidelines also include a section on conformance testing that was not in the previous standards and included more requirements regarding wireless components. It also provides an overview of the requirements for Independent Verification systems, including requirements for a voter verified paper audit trail for states that require this feature for their voting systems. The VVSG includes the requirement that all voting system vendors submit software to a national repository, which will allow local election officials to make sure the voting system software they purchase is the same software that was certified. In addition, NIST and the TGDC are working on the next iteration of guidelines as we speak, and have said they expect to provide their recommendations to EAC by this summer. You may also want to contact Jan Kosko at NIST. Her number is 301-975-2767.

B. Regarding EAC resources, please see our operating budgets below. Note that the National Institute of Standards and Technology (NIST) receives a pass through in our budget, so that amount is not part of EAC's operating budget.

FY 2004 -- \$1.2 million

FY 2005 -- \$13.8 million (\$2.8 million of which was a pass through for NIST)

FY 2006 -- \$14 million (\$2.8 million of which was a pass through for NIST)

FY 2007 -- \$16.2 million (\$4.95 million of which was a pass through for NIST)

C. Regarding your inquiry about what EAC is doing to strengthen the certification program, the most important issue is that it is now a role the federal government has assumed for the very first time. In the past, this was done by the National Association of State Election Directors (NASED) on a volunteer basis. NASED is not a federal agency, and it did not receive any federal funds in its efforts. EAC made the decision not to grandfather any systems certified by NASED. So any system seeking an EAC certification must be tested end to end. Under EAC's program, which is laid out in our Testing and Certification Program Manual, the federal government will not only operate a more rigorous testing and certification process, it will also have a Quality Monitoring Program in place. For the first time manufacturers will be held accountable through not only this program, but also under the decertification process, which would be the ultimate sanction against a manufacturer. If a system is decertified, the manufacturer may not represent the system as being certified, may not label the system as certified, and the system will be removed from the EAC's list of certified voting systems. Election officials will be notified about the decertification. The Quality Monitoring Program will allow election officials to report anomalies. EAC will visit facilities for quality control purposes, and we will perform site reviews per states' requests. In addition, this program will be transparent. Information about the process and the manufacturers and test labs that participate will be posted on the agency's website. Go [here](#) for the list of documents and information we will provide. In addition to holding the manufacturers accountable, any federal employees involved with this program will have their financial holdings reviewed for potential conflicts of interest.

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026848

Jeannie Layson/EAC/GOV
04/16/2007 03:18 PM

To EAC Personnel, fms.eacfabre@yahoo.com
cc
bcc
Subject Chair requests internal review

History: This message has been forwarded.

Hello everyone,

I wanted to notify you that Chair Davidson, in agreement with the other three commissioners, has requested that our IG -- Curtis Crider -- conduct a review of our contracting procedures surrounding the voter identification and vote fraud and voter intimidation research projects. Very shortly, I will distribute her request along with a press release to the media and to all our stakeholders. However, she wanted to make sure the staff was fully informed about this action before we make this news public.

The chair's request, the press release and all of the materials referenced in her request will be available on the home page under Announcements very shortly. Please direct anyone with questions about this action to the website. And let me know if you have questions about any of this information or if I can be of assistance answering questions from the public about this issue.

The chair wants to convey to everyone how much she appreciates your hard work, and that she is confident in our ability to work with Curtis to resolve this issue. Tom would like staff to join him at 3:30 today in the large conf. room upstairs to answer any questions you have.



2007-13 (4-16-07) EAC Requests Review of Voter ID, Fraud & Intimidation Research Projects.pdf

Jeannie Layson
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026849



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

EAC Requests Review of Voter ID, Vote Fraud and Voter Intimidation Research Projects

For Immediate Release
April 16, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – U.S. Election Assistance Commission (EAC) Chair Donetta Davidson today issued a formal request to the commission’s inspector general to conduct a review of the commission’s contracting procedures, including a review of two recent projects focusing on voter identification and vote fraud and voter intimidation. The chair’s memo to the inspector general is attached.

“The actions taken by the commission regarding these research projects have been challenged, and the commissioners and I agree that it is appropriate and necessary to ask the inspector general to review this matter,” said EAC Chair Davidson.

Chair Davidson has requested that the inspector general specifically review the circumstances surrounding the issuance and management of the voter identification research project and the vote fraud and voter intimidation research project.

EAC is an independent bipartisan commission created by HAVA. It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary E. Rodriguez, Caroline Hunter and Gracia Hillman.

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026850



April 16, 2007

MEMORANDUM

To: EAC Inspector General Curtis Crider
Fr: EAC Chair Donetta Davidson
Cc: Commissioners Rodriguez, Hillman and Hunter, Tom Wilkey, and Julie Hodgkins
RE: EAC requests review of contracting procedures

On Friday, April 13, each of my three colleagues – Rosemary Rodriguez, Gracia Hillman, and Caroline Hunter -- agreed with my recommendation that we issue the following formal request to the Commission’s Office of Inspector General to review the circumstances surrounding two recent EAC research projects – vote fraud and voter intimidation and voter identification.

Background

The U.S. Election Assistance Commission (EAC) is an independent, bipartisan Commission created by the Help America Vote Act (HAVA) of 2002.

EAC develops guidance to meet HAVA requirements, adopts voluntary voting system guidelines, accredits voting system test laboratories, certifies voting systems and audits the use of HAVA funds. HAVA also directs EAC to maintain the national mail voter registration form developed in accordance with the National Voter Registration Act (NVRA) of 1993.

The Commission serves as a national clearinghouse and resource of information regarding election administration. It is under the Commission’s clearinghouse role that research projects are conducted with the goal of providing information that will lead to improvements in election administration, as well as inform the public about how, where and when we vote.

The voter identification research was conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics (“Contractor”). The contract, awarded in May 2005, required the Contractor to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches. Last month, the commission voted

unanimously not to adopt the report, citing concerns with its methodology, but voted to release all of the data provided by the Contractor.

The vote fraud and voter intimidation research was conducted by Tova Wang and Job Serebrov (“Consultants”). The contracts, awarded in September 2005, issued to these Consultants tasked them with defining the terms vote fraud and voter intimidation and providing recommendations how to conduct extensive research in the future on these topics. The contract stated that the Consultants were responsible for “creating a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future EAC research resulting from this effort.”

Review Request

The actions taken by the Commission regarding both the voter identification and the vote fraud and voter intimidation research projects have been challenged. Specifically, Members of Congress, the media, and the public have suggested that political motivations may have been part of the Commission’s decision making process regarding these two projects. Also, the Commission has been criticized for the amount of taxpayer dollars that were spent on these two projects, as well as how efficiently these projects were managed.

The Commission takes these allegations very seriously, and we request that you fully review the following issues and provide the Commission and the Congress with a report of your findings as soon as possible. The Commission stands ready to assist you in these efforts and will provide whatever information, including memos, emails and other documents you will need. Cooperating with your review will be the staff’s top priority.

1. Current Commission policy regarding awarding and managing research contracts.
2. Issuance and management of the vote fraud and voter intimidation contract.
3. Circumstances surrounding the receipt of information from Consultants regarding the vote fraud and voter intimidation project.
4. Circumstances surrounding staff efforts to write a final report for Commission consideration.
5. Identification of staff members who assisted in the editing and collaboration of the final vote fraud and voter intimidation report for Commission consideration.
6. Staff and/or Commissioner collaboration with political entities or other federal agencies regarding the vote fraud and voter intimidation project.
7. Circumstances surrounding Commission discussion and deliberation of final adoption of *Election Crimes: An Initial Review and Recommendation for Further Study*.
8. Issuance and management of the voter identification contract.
9. Circumstances surrounding the receipt of information from Contractor regarding the voter identification report.
10. Identification of staff members who assisted in the editing, collaboration, and recommendation to the Commission regarding final adoption of the voter identification report.

11. Staff and/or Commissioner collaboration with political entities or other federal agencies regarding the voter identification project.
12. Circumstances surrounding Commission deliberation whether to adopt a final voter identification report.

For your information, I have attached statements and related correspondence from Members of Congress, and a statement issued by the Commission regarding the criticism.

It is our hope that your findings will instruct us how to move forward in a more efficient, effective and transparent manner. The Commission takes its mandates under HAVA very seriously, and this small Commission has an enormous amount of work to conduct, including testing and certifying voting equipment, providing guidance and assistance to election officials, and auditing the proper use of the \$3.1 billion that was distributed under HAVA.

We look forward to your findings so that we may take the actions necessary to improve the way we conceive research projects, manage research contracts, and make decisions regarding the final release of data provided to the Commission from a third party.

United States Senate
WASHINGTON, DC 20510

April 12, 2007

The Honorable Donetta Davidson
Chairman
U.S. Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, DC 20005

Dear Commissioner Davidson:

We are writing to seek a response to very troubling news reports that included allegations that the Commission may have altered or delayed release of two taxpayer-funded studies of election issues for political purposes.

While the Commission is within its rights to decide what guidance it issues to election officials, it is critical that its actions are not perceived as politically motivated and it is imperative that you provide full documentation about the Commission's proceedings on these matters.

On Wednesday, the *New York Times* reported that a bipartisan team of election law experts hired by the Commission to research voter fraud in federal elections found that there was little such fraud around the nation, but the Commission revised the report to say that the pervasiveness of voter fraud was still open to debate.

On Monday, *Roll Call* reported that the Commission two weeks ago rejected the findings of a report, prepared as part of a \$560,000 contract with Rutgers University's Eagleton Institute and Ohio State University's Moritz College of Law. That report found that voter identification laws may reduce election turnout, especially by minorities.

Commissioner Davidson

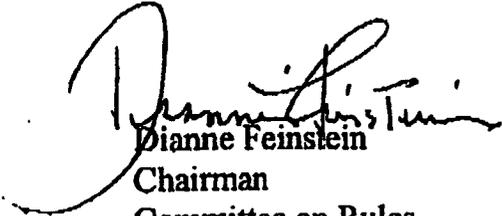
- 2 -

April 12, 2007

It is imperative that the Commission's actions and deliberations are unbiased, free from political influence and transparent. While the Commission does not have to agree with the experts who perform its research, it should make the research available unfettered and unfiltered.

Attached are a series of questions, we would like the Commission to address. We look forward to your timely response.

Sincerely,



Dianne Feinstein
Chairman
Committee on Rules
and Administration



Richard J. Durbin
Chairman
Subcommittee on Financial
Services and General
Government
Committee on Appropriations

We request information and documentation from the Commission that answer the following questions:

COMMISSION'S OVERSIGHT ON EAGLETON CONTRACT TO PERFORM A STUDY ON VOTER IDENTIFICATION

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Would you please provide a copy of the approved Request For Proposals, as well as any contract modifications that were agreed to between the Commission and Eagleton Institute and subcontractors?
3. Can you provide the names and qualifications of Election Assistance Commission staff that worked on the Eagleton Institute project?
4. Please indicate how many project meetings occurred during the term of the Eagleton contract, including in-person meetings, conference calls regarding the status of the report, and any meeting where Commissioners were present for at least part of the meeting. Please provide copies of any minutes from those meetings.
5. Please identify the names and affiliations of members of the Peer Review group or groups that examined the Eagleton Institute drafts. Please also indicate the dates upon which any such review of the Eagleton research was conducted, and the specific concerns or complaints that were raised by members of the Peer Review group as to either the analysis or statistical methodology, if any. Please provide copies of any minutes from those meetings.
6. If certain members of the Peer Review groups had concerns with the data or methodology of the Eagleton study, was that information communicated to Eagleton, and were any changes made to the study based on Peer Review group concerns with methodology or data?
7. Who were the individuals (and what were their academic qualifications) that advised the Commission that the data, methodology, or the results of the Eagleton Contract were so flawed that the Commission should reject the report? At what point did the Commission receive input from those individuals?

8. The Commission previewed its research on the Eagleton Institute's study on Provisional Voting at its May 2006 Advisory Board meetings—why was the Voter Identification Draft Study not discussed at that time? What is the status of the Provisional Voting report?
9. In rejecting the Eagleton report, the Commission indicated concerns that there was only one year's worth of data. Given that this was the first year that Commission had studied the results, isn't "one year" what was originally contemplated in the Eagleton contract? Isn't the reason for having a major research institute conduct this study is so they can draw initial assessments from that data—even though that data can be augmented in future years? Because of the rejected report, will the Commission start anew for research in the 2008 elections?
10. What was the final, total cost of the Eagleton contract, and what was produced or released by that Commission as a result of that contract?

COMMISSION'S OVERSIGHT OVER VOTER FRAUD/INTIMIDATION STUDY

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Given the bipartisan nature of the Working Group that guided the Voter Fraud/Intimidation report, and the bipartisan nature of the contracted experts who uniformly support the results of this report, what concerns lead the Commission to determine the report should not be released?
3. If there were points in the report that the Commission objected to, were there attempts to work with the contractors to deal with specific concerns? If there were such attempts, please describe them.

4. Who drafted the Commission summary (released in December, 2006) of the Voter Fraud/Intimidation report, and what were their credentials and involvement in the original research process? Were there instructions or guidance given from Commissioners or senior staff as to what portions of the research should be emphasized? Who at the Commission reviewed the summarized report? Since the contracted experts are referred to in the Commission's released report, were the contractors allowed a chance to review or edit that Commission's final report that was released in December, 2006?
5. Please provide copies of any electronic or written communications between Commission employees that relate to the editing of the Voter Fraud/Intimidation report.
6. Please explain what Mr. Job Serebrov was referring to in his email referenced in the *New York Times* article of April 11, 2007. Please provide any documents in the Commission's possession where employees or contracted experts discussed pressure, political sensitivities, or the failure of the Commission to adopt the Voter Fraud/Intimidation report from March 1, 2006 to present.
7. While we realize that the Commission voted to release its summary report in December 2006, was there a public vote taken to reject the Draft Voter Fraud/Intimidation report? Such a monumental decision to reject the contract experts' work is a policy decision, and one that should be done in public. When was the decision made to reject the original report, and what notice was provided to the public that the Commission would reject that report?
8. Prior to the Draft Voter Fraud/Intimidation report's release, had other organizations requested a copy of that original report? Please include copies of your responses to those organizations, if any.
9. Had any States requested that the Commission or staff provide guidance related to voter identification requirements in the Help America Vote Act, or identification requirements generally? Please provide those requests, and any responses from the Commission.
10. Please indicate what steps the Commission is taking to ensure that political considerations do not impact the agency's research and that decisions are handled in a public and transparent manner.

COMMITTEE ON THE JUDICIARY

- CHAIR — SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
- SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY
- SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

COMMITTEE ON HOMELAND SECURITY

- SUBCOMMITTEE ON BORDER, MARITIME AND GLOBAL COUNTERTERRORISM
- SUBCOMMITTEE ON EMERGING THREATS, CYBERSECURITY, AND SCIENCE AND TECHNOLOGY

COMMITTEE ON HOUSE ADMINISTRATION

- CHAIR — SUBCOMMITTEE ON ELECTIONS

CHAIR, CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION

Congress of the United States
House of Representatives
 Washington, DC 20515-0516

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CO-CHAIR, CONGRESSIONAL HAZARDS CAUCUS

CO-CHAIR, BIPARTISAN CONGRESSIONAL REFUGEE CAUCUS

CO-CHAIR, CONGRESSIONAL VIETNAM CAUCUS

April 12, 2007

Chairwoman Donetta Davidson
 United States Election Assistance Commission
 1225 New York Avenue N.W., Suite 1100
 Washington, DC 20005

Dear Chairwoman Davidson:

As Chairwoman of the Committee on House Administration Subcommittee on Elections, which has oversight over the Election Assistance Commission, I was alarmed at what appears to be an emerging pattern by the EAC to hold off on publicly releasing reports as well as modifying reports that are released. Two recent instances have brought to light the increased politicalization of the EAC and this lack of transparency.

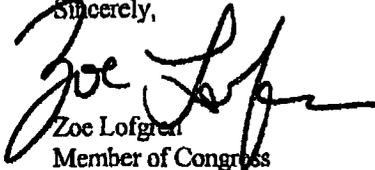
First, the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released. The EAC released report "Election Crimes: An Initial Review and Recommendations for Future Study" does not accurately reflect the research in the original report "Voting Fraud and Voter Intimidation."

Second, in addition to this report on voter fraud and intimidation, the EAC recently released a report by The Eagleton Institute of Politics at Rutgers University on voter identification. Again, the EAC did not endorse the report, citing methodological concerns, and only released it after pressure from Congress.

The EAC is charged with conducting nonpartisan research and to advise policy makers. How are we to rely on advice if instead of full and accurate reporting, we are provided an inaccurate modified version which negates clear evidence to the contrary in the original research? I am outraged that the election process is being threatened by a lack of transparency and limited discussion.

In order to preempt any further problems with the release of reports from the EAC, I request all versions of the Absentee Ballot report and the Military and Overseas report, as well as any other overdue reports, including supporting documents and research, be provided to my office by close of business Monday, April 16, 2007. These reports are overdue and I want to ensure that the delay is no way related to what appears to be an ongoing problem of politicalization of the EAC.

Sincerely,


 Zoe Lofgren
 Member of Congress

For Immediate Release

April 11, 2007

Hinchey, Serrano Urge Non-Partisanship, Greater Transparency at Election Assistance Commission

Washington, DC - Today, Congressmen Maurice Hinchey (NY-22) and José E. Serrano (NY-16) urged the Election Assistance Commission (EAC) to act with greater transparency and without partisanship. The comments from the congressmen came as the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released.

"The EAC has an obligation to be forthright with the American people and operate transparently and in a non-partisan manner," said Congressman Hinchey, who requested the draft report from EAC Commissioner Donetta L. Davidson during a subcommittee hearing last month. "The draft report was commissioned with taxpayer dollars upon a mandate from Congress so that we could learn more about voter fraud and intimidation. The need for this report is even more clear when we see the way in which the Bush administration is carrying out the electoral process and how this system is sliding towards corruption. In hiding a draft report from the public that is significantly different from the final version, the EAC has created a lot more questions than it has answered while stunting debate on the issue. In order for our democracy to function properly it is essential that our elections are free of any corruption and that includes ensuring that the EAC does not work to benefit one political party over the other. To achieve that goal we must have all the facts and opinions on the table, not just some of them. The EAC must never limit discussion and debate."

"The EAC is charged with helping to ensure our elections are trustworthy and administered fairly," said Congressman Serrano, who is Chair of the Appropriations Subcommittee that oversees the EAC budget. "I'm concerned if changes were made to the report on voter fraud because of partisan bias rather than impartial analysis. When you read the draft report side-by-side with the final version, it is clear that important conclusions of the experts who wrote the draft report were excluded from the final product. Among the excluded information is an analysis that undermines the notion that voter fraud is rampant."

"I am concerned that the EAC did not publicly release the taxpayer-funded draft report, and I worry that political considerations may have played a role. We cannot have a politicized EAC, or one that yields to outside pressure. Our democracy, and the American people's faith in it, is far more important than any short-term political advantage."

The draft report was written by outside experts under contract with the EAC. The final report was entitled "Election Crimes: An Initial Review and Recommendations for Future Study" and was issued on December 7, 2006.

The EAC is an independent bipartisan commission created by the 2002 Help America Vote Act in order to disburse funds to the states for the purchase of new voting systems, certify voting technologies, develop guidelines and serve as an information resource for election administration.

025860



Congressman José E. Serrano
Representing the Sixteenth District of New York

PRESS RELEASE

MEDIA CONTACT:
Philip Schmidt (202)
225-4361

FOR IMMEDIATE
RELEASE:
Apr 11, 2007

SERRANO, HINCHEY URGE NON-PARTISANSHIP, GREATER TRANSPARENCY AT ELECTION ASSISTANCE COMMISSION

Washington, DC – April 11, 2007 – Today, Congressmen Maurice Hinchey (NY-22) and José E. Serrano (NY-16) urged the Election Assistance Commission (EAC) to act with greater transparency and without partisanship. The comments from the congressmen came as the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released.

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025861

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###

WASHINGTON OFFICE 2227 Rayburn House Office Building Washington, D.C. 20515-3216 (202) 225-4361 Fax: (202) 225-6001	BRONX OFFICE 788 Southern Blvd. Bronx, New York 10455 (718) 620-0084 Fax: (718) 620-0658
Email: jserrano@mail.house.gov	

026362

Juliet E. Hodgkins/EAC/GOV
04/15/2007 05:55 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov, Eileen L. Kuala/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Stephanie Wofford, "Fabre, Stacie"
bcc

Subject Draft letter to Congresswoman Lofgren

History: This message has been forwarded

Commissioners,

Attached is a draft letter to respond to Congresswoman Lofgren's letter regarding the voting fraud and voter intimidation and voter identification studies as well as requesting information regarding our studies on Free Absentee Ballot Postage and Military and Overseas Voting (Internet Voting). I have not attached the appendixes as I have those in hard copy and will be assembling them in the morning into the appendixes. Congresswoman Lofgren has asked for this information by COB Monday. As such, I would appreciate your comments as early as possible tomorrow, but no later than 2:00 p.m. -- so that I can consolidate the comments and get the information to the Congresswoman's office by her deadline.

Thanks in advance for your quick review of this letter. Please let me know if you have any questions.



letter to Congresswoman Lofgren re studies - draft - 041507.doc

Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

026863

April 13, 2007

Congresswoman Zoe Lofgren, Chair
House Administration Committee
Subcommittee on Elections
102 Cannon House Office Building
Washington, DC 20515

Via Hand Delivery

RE: EAC Research Efforts

Dear Congresswoman Lofgren:

Thank you for your letter of April 12, 2007 and the opportunity to provide valuable information about the research efforts being undertaken by the U.S. Election Assistance Commission. Your letter referenced four studies that have been or are being conducted by EAC through contracts and contracted employees. I will address each in turn, below.

Voting Fraud and Voter Intimidation Study

The first study about which you inquired is the voting fraud and voter intimidation study. This study was conducted by contract employees of the EAC for the EAC. In the fall of 2005, EAC hired two contract employees to conduct an initial review of the existing information available about voting fraud and voter intimidation. From that review, the employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were reviewed by the contract employees. In addition, they provided a draft report for EAC's review and consideration.

EAC, as a Federal agency, is the policy and decision making body. Consultants, contractors and employees do not make policy for EAC. Their recommendations were only one part of a deliberative process that precedes any agency decision. The Freedom of Information Act, a Federal statute governing the release of documents to the public, creates an exemption to protect pre-decisional, draft documents.

The report requested by House Appropriations Committee is a draft, representing one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by contract employees in order to aid the EAC's Commissioners in their decisions regarding voting fraud and voter

intimidation. The contract employees had no personal interest in their submissions and had no agency decision-making authority. Each was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when the report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

In keeping with this concept, EAC reviews and vets all draft products or recommendations delivered by its consultants, contractors and employees. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC conducted this review of the draft voting fraud and intimidation report provided by the contracted employees. EAC found that the draft report failed to provide a definition of the terms as required, contained conclusions that were not sought under the terms of the contract or were not supported by the underlying research, and contained allegations that showed bias. EAC also found that the research provided by the contracted employees was a good body of data concerning the existing knowledge of voting fraud and intimidation. EAC staff developed a subsequent draft report to correct the problems mentioned above, to address the questions that this study sought to answer, and to address inconsistencies between the contracted employees' draft report and the research that was provided. The staff report included all of the contracted employees' and working group's recommendations. The staff report was adopted by EAC on December 7, 2007 during its public meeting and became the final and decisional report of the Commission on this issue. The final report as well as all of the underlying research conducted by the contracted employees are available on EAC's Web site, www.eac.gov.

Voter Identification Study

The second study about which you inquired was a study conducted by Rutgers University in conjunction with Moritz College of Law. Rutgers and Moritz served as contractors to EAC and produced this draft document pursuant to the provisions of the contract governing that relationship. A draft report was created by Rutgers University in conjunction with the Moritz College of Law (Ohio State University) to "...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voter identification procedures." The stated objective of the contract was to:

...obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

As with the voter fraud and intimidation study mentioned above, the contractors were provided guidance, information, and were directed by EAC personnel. The final product they delivered (draft report sought) was identified as "a guidance document for EAC

adoption.” Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action.

EAC reviewed and vetted of the draft document provided by Eagleton. Review of that document revealed data and analysis that caused EAC concern. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as “state your name.” The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.⁴

On March 30, 2007, EAC decided not to adopt Eagleton’s study and not to issue an EAC report based upon this study. The Commission did release all of the material provided by Eagleton at that time. In addition, EAC voted to engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states’ requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC’s next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Free Absentee Ballot Postage Study

Pursuant to Section 246 of the Help America Vote Act of 2002 (HAVA), EAC was directed to study and produce a report on the feasibility and advisability of a program that would provide absentee ballots that could be returned by the voter postage-free. HAVA directed that this report be delivered one year after the passage of HAVA, that is not later than October 29, 2003.

EAC was not able to complete this study within the original deadline set forth in HAVA, but EAC currently has a pending research project to provide information for a report on this subject. On the deadline set forth in HAVA, EAC Commissioners had not yet been appointed and confirmed to fill their positions and to form the agency that is now EAC. After the formation of EAC in December 2003, Congress provided an appropriation for FY 2004 in the amount of \$1.2 million dollars, which did not include sufficient funding for research activities. EAC received operational funding including some funding for research in its FY 2005 budget. Thus, in FY 2005, EAC developed an issued a request for proposals for a research contract to study this issue. No responsible bidders responded to the request for proposals and the request was ultimately withdrawn by the Commission due to the failure to receive any responsible bids.

Because this research report was required by HAVA and the deadline for the completion of the project had passed, EAC issued a subsequent request for proposals in FY 2006. EAC received proposals and awarded a contract for the study of this issue. The statement of work for that project has been attached as Appendix "1" to this letter for your review and convenience. As you will see, the statement of work sets forth several requirements for the contractor, including conducting a survey of registered voters to gather information from them regarding their voting behavior and whether the implementation of a national program for free absentee ballot postage would change that behavior. The contractor was further asked to conduct a series of focus groups comprised of potential beneficiaries of free or reduced absentee ballot postage.

The EAC and its contractors are subject to the Paperwork Reduction Act (PRA) and thus all information collection instruments must be published prior to issuance to obtain public

comment regarding the questions asked, the necessity of the collection, and the burden that will be imposed on respondents. EAC published the survey instrument to be used as a part of this study in the Federal Register on November 14, 2006. See Federal Register, Vol. 71, No. 219, Page 66321. A copy of the Federal Register notice and request for comments is attached as Appendix "2" to this letter. In keeping with the PRA, a notice for comments to be provided to the Office of Management and Budget (OMB) was published in the Federal Register on January 23, 2007. See Federal Register, Vol. 72, No. 14, Page 2875. A copy of that notice is attached as Appendix "3" to this letter. In addition for your convenience a copy of the actual survey instrument has been attached as Appendix "4" to this letter.

In keeping with the statement of work, the contractor has also developed discussion guides for the focus groups that it has planned involving senior citizens, disabled voters, and low income voters. These guides have been attached as Appendix "5" to this letter. This research project requires coordination with the United States Postal Service (USPS) as implementation of such a program would undoubtedly have a significant impact on that agency. Through that participation, USPS has suggested that additional focus groups be added to the original work plan for this study. The contractor communicated that request to EAC and the proposal for additional working groups has been attached as Appendix "6" to this letter. EAC believes that these additional focus groups would be helpful for this research project and is working with the contracting officer on this contract to determine whether the contract can be amended to add these additional focus groups.

You will note from the attached work plan that this project has a current project completion date of November 1, 2007. See Attachment "7", Work Plan. Progress reports updating progress on the work plan are also attached as Appendix "7" to this letter. However, additional focus groups would require additional time to complete the proposed, expanded statement of work. See Attachment "6", Proposal for Adding Focus Groups to the Free/Reduced Postage for Absentee Ballots Research Project. Progress reports updating progress on the work plan are also attached as Appendix "7" to this letter.

Military and Overseas Voting Study

Section 245 of HAVA directs EAC to study the risks and benefits of using the Internet to conduct voting. The only area in which this type of electronic technology has been used at all to administer voting is for military and overseas citizens. As such, EAC has focused on using that experience as instructive for the possibility of Internet voting on a larger scale.

This study was directed to be completed within 20 months of the passage of HAVA, or no later than June 30, 2004. EAC was unable to complete this study by the original deadline, but currently has a pending research project to provide information regarding the use of electronic means for voting in military and overseas citizen voting.

Much like the Free Absentee Ballot Postage Study, the majority of time allotted in the original deadline for research passed prior to the existence of EAC and during the time of its initial budget which did not allow for research spending. In FY 2005, EAC approached the Technical Guidelines Development Committee (TGDC), the Federal advisory committee that researches and proposes voting system standards to EAC, to provide guidelines on security, core requirements and usability requirements for the use of the Internet in voting. The TGDC declined to include these as a part of their recommendations for voting system guidelines. TGDC considered the possibility of using the Internet for voting too risky and further believed that any voting system, Internet-based or not, must conform to the standards established by EAC based upon their research and recommendation.

Following this set back, EAC opted to seek a contractor to provide research in this area. We first conferred with the Federal Voting Assistance Program of the Department of Defense that several years ago worked on a substantial project aimed at establishing Internet voting for military members. In those conversations, we learned that there are many obstacles at the state and local level to implementing Internet-based voting. Based on this information, EAC determined that the best course of action was to find out what the current state of readiness and willingness is among state and local election jurisdictions to implement Internet-based voting. We can only develop standards for an appropriate system if we know what needs that system will have to serve and what obstacles it will have to overcome. A request for proposals was issued in FY 2006 and a contract was awarded.

A copy of the statement of work for this study has been attached as Appendix "8" to this letter. As you will see, that statement tasks the contractor with conducting case studies of election jurisdictions with experience in this area, conducting a survey of military and overseas voters, and a conducting a conference on Internet voting. The contractor has developed an outline for their case studies. This outline has been attached as Appendix "9" to this letter. In addition, the contractor has developed and distributed a survey instrument in keeping with the emergency provisions of the PRA. A copy of that survey instrument is attached as Appendix "10" to this letter. The conference is planned for August 2007 in New Orleans. The progress reports from the contract showing their progress on completing tasks as set forth in the statement of work are attached as Appendix "11" to this letter.

Thank you for your requests and your interest in election administration. I trust that the information that we have provided will give you a complete picture of the status of the pending research projects about which you inquired as well as valuable information concerning EAC's previous research projects regarding voting fraud and voter intimidation and voter identification. However, if you have further questions, please do not hesitate to contact me.

Congresswoman Zoe Lofgren, Chair
House Administration Subcommittee on Elections
Page 7

Sincerely,

Donetta Davidson
Chair

Donetta L.
Davidson/EAC/GOV
04/13/2007 12:36 PM

To Elieen L. Kuala/EAC/GOV@EAC
cc
bcc
Subject Re: FOIA Request

History: This message has been replied to

Thanks

Sent from my BlackBerry Wireless Handheld
Elieen L. Kuala
----- Original Message -----

From: Elieen L. Kuala
Sent: 04/12/2007 02:18 PM EDT
To: Donetta Davidson
Subject: Re: FOIA Request

I did a search through your emails with their names and I didn't find any. I don't have any either. However, I will check and see if we have any mailed correspondence hard copies.

Elle L.K. Kuala
Special Assistant to the Chair
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
office: (202) 566-2256
fax: (202) 566-1392
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.
Davidson/EAC/GOV
04/12/2007 01:33 PM

To Jeannie Layson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, "stephanie wolson" <[REDACTED]>

cc

Subject Re: FOIA Request

Elle, I don't think I have any emails from Job or Tova, but to be on the safe side would you double check

Sent from my BlackBerry Wireless Handheld
Jeannie Layson

026871

----- Original Message -----

From: Jeannie Layson
Sent: 04/12/2007 08:38 AM EDT
To: Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey; Juliet Hodgkins; Karen Lynn-Dyson; Margaret Sims; Sheila Banks; Eileen Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener; stephanie.wolson@gmail.com
Subject: FOIA Request

Today I will circulate a formal FOIA request to all of you. Please note that this request is from a journalist. The information I circulate will include a copy of the original request, which was made by the DC bureau of McClatchy Newspapers. An abbreviated version of the request follows:

"Copies of all emails between Job Serebrov and Election Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for EAC."

Some of you have provided similar information in the past, but I will need another complete submission that includes any related files that may have been generated since your last submission.

Please anticipate a formal request to be distributed to everyone today, and take note that the deadline to provide this information is April 30. Thank you.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

026872

Donetta L.
Davidson/EAC/GOV
04/14/2007 12:35 PM

To Elieen L. Kuala/EAC/GOV@EAC
cc
bcc
Subject Re: FOIA Request

History: This message has been replied to.

Thanks

Sent from my BlackBerry Wireless Handheld
Elieen L. Kuala
----- Original Message -----

From: Elieen L. Kuala
Sent: 04/13/2007 02:00 PM EDT
To: Donetta Davidson
Subject: Re: FOIA Request

I checked all of our paper records and found nothing so I submitted our FOIA response to Jeannie.

Elle L.K. Kuala
Special Assistant to the Chair
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
office: (202) 566-2256
fax: (202) 566-1392
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Donetta L. Davidson/EAC/GOV

Donetta L.
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Special Assistant to the Chair
U.S. Election Assistance Commission
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Donetta L. Davidson/EAC/GOV

Donetta L.
Davidson/EAC/GOV
04/12/2007 01:33 PM

To Jeannie Layson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, "stephanie wolson" <stephanie.wolson@gmail.com>

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026875

Donetta L.
Davidson/EAC/GOV
04/14/2007 10:00 PM

To Elieen L. Kuala/EAC/GOV@EAC
cc
bcc
Subject Re: FOIA Request

History

This message has been forwarded.

Thanks

Sent from my BlackBerry Wireless Handheld
Elieen L. Kuala
----- Original Message -----

From: Elieen L. Kuala
Sent: 04/14/2007 09:58 PM EDT
To: Donetta Davidson
Subject: Re: FOIA Request

Also I got your message and I will get to work on that tomorrow. I will email Tom and we can talk about what you want to write to Curtis.

Elle Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
(202) 566-2256
www.eac.gov

Sent from my BlackBerry Wireless Handheld
Donetta L. Davidson
----- Original Message -----

From: Donetta L. Davidson
Sent: 04/14/2007 12:35 PM EDT
To: Elieen Kuala
Subject: Re: FOIA Request

Thanks

Sent from my BlackBerry Wireless Handheld
Elieen L. Kuala
----- Original Message -----

From: Elieen L. Kuala
Sent: 04/13/2007 02:00 PM EDT
To: Donetta Davidson
Subject: Re: FOIA Request

I checked all of our paper records and found nothing so I submitted our FOIA response to Jeannie.

Elle L.K. Kuala
Special Assistant to the Chair
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100

026876

Washington, DC 20005
office: (202) 566-2256
fax: (202) 566-1392
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.
Davidson/EAC/GOV
04/13/2007 12:36 PM

To Elieen L. Kuala/EAC/GOV@EAC
cc
Subject Re: FOIA Request 

Thanks

Sent from my BlackBerry Wireless Handheld
Elieen L. Kuala
----- Original Message -----

From: Elieen L. Kuala
Sent: 04/12/2007 02:18 PM EDT
To: Donetta Davidson
Subject: Re: FOIA Request

I did a search through your emails with their names and I didn't find any. I don't have any either. However, I will check and see if we have any mailed correspondence hard copies.

Elle L.K. Kuala
Special Assistant to the Chair
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
office: (202) 566-2256
fax: (202) 566-1392
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.
Davidson/EAC/GOV
04/12/2007 01:33 PM

To Jeannie Layson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, "stephanie wolson" <>
cc
Subject Re: FOIA Request 

026877

Elle, I don't think I have any emails from Job or Tova, but to be on the safe side would you double check

Sent from my BlackBerry Wireless Handheld

Jeannie Layson

----- Original Message -----

From: Jeannie Layson

Sent: 04/12/2007 08:38 AM EDT

To: Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey; Juliet Hodgkins; Karen Lynn-Dyson; Margaret Sims; Sheila Banks; Elieen Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener; stephanie.wolson@gmail.com

Subject: FOIA Request

Today I will circulate a formal FOIA request to all of you. Please note that this request is from a journalist. The information I circulate will include a copy of the original request, which was made by the DC bureau of McClatchy Newspapers. An abbreviated version of the request follows:

"Copies of all emails between Job Serebrov and Election Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for EAC."

Some of you have provided similar information in the past, but I will need another complete submission that includes any related files that may have been generated since your last submission.

Please anticipate a formal request to be distributed to everyone today, and take note that the deadline to provide this information is April 30. Thank you.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

026878

Margaret Sims/EAC/GOV
04/13/2007 11:57 AM

To Jeannie Layson/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Caroline C.
Hunter/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Elieen L.
bcc

Subject Re: FOR YOUR REVIEW: Draft letter to Bds

History:

This message has been forwarded

Jeannie:

I noticed the following factual errors in the draft letter, which we may want to correct:

- The consultants were asked to do 4 things (not 2): (1) provide a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; (2) perform background research (including Federal and State administrative and case law review) and identify current activities of key government agencies, civic and advocacy organizations regarding voting fraud and voter intimidation; (3) establish and convene a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation to review the definition of what constitutes voting fraud and voter intimidation and the results of the background research, and to make recommendations on future EAC research on the topic; and (4) report to EAC on the preliminary research effort, working group deliberations, and recommendations for future research.
- The project working group met and offered its feedback and recommendations just before the 2006 meetings of the Standards and Advisory Boards, but after the May 2006 status report had been prepared. EAC staff orally updated the boards on the results of this meeting.

--- Peggy

Jeannie Layson/EAC/GOV



Jeannie Layson/EAC/GOV

04/13/2007 10:12 AM

To Donetta L. Davidson/EAC/GOV, ghilman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Hodgkins/EAC/GOV@EAC, Sheila A.
Banks/EAC/GOV@EAC, Bert A.
Benavides/EAC/GOV@EAC, Elieen L.
Kuala/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC,
Stephanie Wolson/EAC/GOV@EAC,

Subject FOR YOUR REVIEW: Draft letter to Bds

Commissioners,

We attempted to capture your edits in this version. Please let me know if this is what you had in mind. Also, take note that there is still pending decision regarding the release of the draft, which is why the related sentence is highlighted. Thank you.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100

025879

Washington, DC 20005
Phone: 202-566-3100
www.eac.gov



- AdvBdsletterDRAFT.doc

April 13, 2007

EAC Board of Advisors
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors:

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC's Voting Fraud and Voter Intimidation project that was submitted by two contracted employees, Tova Wang and Job Serebrov. That draft report, which is attached to this letter, is a compilation of summaries of the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

In 2005, the EAC Board of Advisors helped EAC prioritize its research efforts. As a result, EAC developed a research agenda that included studying voting fraud and voter intimidation. In the fall of 2005, EAC hired the two contract employees to conduct an initial review of the information available about voting fraud and voter intimidation. The employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted.

In May 2006, a status report regarding this study was presented at both public meetings of the Standards Board and Board of Advisors. Each group provided feedback on the progress of the study and the direction that it should take. Following those meetings, the employees convened a working group that likewise provided feedback on the study. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were reviewed by the contract employees. In addition, they provided a draft report for EAC's review and consideration. EAC adopted a final report on voting fraud and voter intimidation, *Election Crimes: An Initial Review and Recommendations for Future Study*, in December 2006.

After the release of EAC's final report there was some debate about whether EAC should release the draft version provided by our contracted employees. The Board of Advisors considered, but did not pass, a resolution urging the release of that document. Recently, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, and the committee released the draft report this week.

There has been much discussion surrounding EAC's review process of the material provided by the contract employees, and how much was included in the final report. After receiving the information from the consultants, EAC conducted due diligence to make sure the information was accurate, as both boards encouraged us to do regarding this project as well as all research we receive from third parties. During our review, we

closely examined any claims regarding existing voter fraud and intimidation or the lack thereof. Due to the small scope of the project, we wanted to be very sure any claims could be fully supported by data.

The consultants interviewed 24 people with experience in these issues. As you will see in the consultants' draft, they reached conclusions in their summaries that were based solely on these interviews, not on the entire body of work they collected. While individual accounts are certainly useful and instruct us on what issues to examine in moving forward, we did not feel these interviews provided the kind of extensive data upon which to draw these conclusions.

We understand that the topics of voter fraud and voter intimidation are hotly debated and sometimes divisive. We assure you that the process we took to review all of the materials and adopt a final report was not motivated by partisan politics, but by a responsibility and desire to issue data and findings that EAC could stand firmly behind and defend.

To avoid even the appearance of partisan influence in future research endeavors, EAC has established a bipartisan commission panel to oversee all research. We will also review our contracting policy and internal procedures to make sure consultants provide data that can be fully supported and substantiated. We will also take a hard look at our internal review process to determine if we can make further improvements as well as identify ways to expedite the process in which we complete these projects.

We take input from our advisory boards, Congress, and the public very seriously, and we pledge to you that we will continue to provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.

Thank you for your service and for your continued commitment to the election process. We know that you in the election community rely on us to supply you with reliable information and we will strive to provide you with the very best information available on election administration issues.

We have attached a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please don't hesitate to contact us.

Sincerely,

Donetta Davidson, Chair

Gracia Hillman, Commissioner

Caroline Hunter, Commissioner

Rosemary Rodriguez, Commissioner

Juliet E. Hodgkins/EAC/GOV
04/13/2007 09:19 AM

To Elieen L. Kuala/EAC/GOV@EAC
cc
bcc
Subject Fw: First cut at letter to Zoe Lofgren

History:  This message has been forwarded

Elle,

would you fax this to donetta?



letter to Congresswoman Lofgren re studies - draft.doc

Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/13/2007 09:18 AM —

Donetta L.
Davidson/EAC/GOV
04/13/2007 08:50 AM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject Re: First cut at letter to Zoe Lofgren 

Julie. Could you fax the Zoe lett to 3037415861. Thanks

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Juliet E. Hodgkins
Sent: 04/12/2007 06:19 PM EDT
To: Donetta Davidson
Subject: First cut at letter to Zoe Lofgren

Donetta,

I have attached a draft of a letter that we might use to respond to the request from Zoe Lofgren. I wanted to get it to you for you to start reviewing. It is rather lengthy. It also assumes that we are not going to release the fraud and intimidation report (a matter which came under some debate this afternoon). If that decision changes, I will have to alter the letter. You will also note that there are a number of blanks in the document, which I will fill in as soon as I have the information from Karen.

026883

Juliet T. Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

026884

April 13, 2007

Congresswoman Zoe Lofgren, Chair
House Administration Committee
Subcommittee on Elections
102 Cannon House Office Building
Washington, DC 20515

Via Hand Delivery

RE: EAC Research Efforts

Dear Congresswoman Lofgren:

Thank you for your letter of April 12, 2007 and the opportunity to provide valuable information about the research efforts being undertaken by the U.S. Election Assistance Commission. Your letter referenced four studies that have been or are being conducted by EAC through contracts and contracted employees. I will address each in turn, below.

Voting Fraud and Voter Intimidation Study

The first study about which you inquired is the voting fraud and voter intimidation study. This study was conducted by contract employees of the EAC for the EAC. In the fall of 2005, EAC hired two contract employees to conduct an initial review of the existing information available about voting fraud and voter intimidation. From that review, the employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were reviewed by the contract employees. In addition, they provided a draft report for EAC's review and consideration.

EAC, as a Federal agency, is the policy and decision making body. Consultants, contractors and employees do not make policy for EAC. Their recommendations are only one part of a deliberative process that precedes any agency decision. The Freedom of Information Act, a Federal statute governing the release of documents to the public, creates an exemption to protect pre-decisional, draft documents.

As you may know, the deliberative process privilege protects intra-agency documents that are (1) pre-decisional in nature and (2) part of the deliberative process. In other words, the documents must be part of a process that recommends or presents opinions on a policy matter or governmental decision before that matter is finally decided. It is a well settled matter of law that the work of contract employees and

contractors (“consultants”) constitute intra-agency documents.¹ This is true even where the consultants are deemed to be independent contractors and are not subject to the degree of control that agency employment entails.² The courts have made this determination after recognizing that agencies have a special need for the opinions and recommendations of temporary consultants.³ Ultimately, deliberative documents are exempt from release (1) to encourage open and frank discussions on policy matters between agency subordinates and superiors, (2) to protect against premature disclosure of proposed policies and (3) to protect against public confusion that might result from disclosure of rationales that were not in fact the ultimate basis for agency action.⁴

The report requested by House Appropriations Committee is a draft, representing one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by contract employees in order to aid the EAC’s Commissioners in their decisions regarding voting fraud and voter intimidation. The contract employees had no personal interest in their submissions and had no agency decision-making authority. Each was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when the report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

The determination of this document as predecisional is born out in the facts surrounding the project at issue, including the contract documents that gave rise to research and writing of this draft report. First, the voter fraud and intimidation study that was requested is a draft of a final document that has already been released after being vetted by staff and approved by the EAC Commissioners. It is available in its final form on EAC’s Web site, www.eac.gov. The draft document at issue was created by two contract employees hired pursuant to 5 U.S.C. §3109 (see 42 U.S.C. §15324(b)). Individuals hired under this authority enter into an employment relationship with the EAC. The contract employees were supervised by an EAC program director who participated directly in the project. For example, the supervisor approved, facilitated, scheduled and participated in interviews conducted for the project. Further, the contract employees were provided research materials and other support from EAC law clerks and staff. As stated by their contracts, these consultants were hired so that the EAC could “...obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation.”

¹ Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1, 9-11 (2001) (Citing Harry E. Hoover v. Dept. of the Interior, 611 F.2d 1132, at 1138 (1980); Lead Industries Assn. v. OSHA, 610 F.2d 70, 83 (C.A.5 1980) (applying exemption 5 to draft reports prepared by contractors); and Government Land Bank v. GSA, 671 F.2d 663, 665 (CA1 1982)); See also Hertzberg v. Veneman, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003).

² Klamath, at 10.

³ Hoover, 611 F.2d at 1138.

⁴ NLRB v. Sears, Roebuck & Co., 41 U.S. at 151.

Moreover, the contracts clearly forbid the consultants from releasing the draft they created consistent with the privilege covering the draft report. The contract states

All research, information, documents and any other intellectual property (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express written permission of the EAC.

Finally, the purpose or subject of the draft report at issue was to make an EAC determination on how voter fraud should be studied by the agency. This was to be done by (1) assessing the nature and quality of the information that presently exists on the subject matter, (2) defining the terms and scope of EAC study as proposed by HAVA, (3) determining what is to be studied and (4) determining how it is to be studied. In addition, the Consultants were asked to develop a definition of the phrases "voting fraud" and "voter intimidation."

In keeping with this concept, EAC reviews and vets all draft products or recommendations delivered by its consultants, contractors and employees. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC conducted this review of the draft voter fraud and intimidation report provided by the contracted employees. EAC found that the draft report failed to provide a definition of the terms as required, contained conclusions that were not sought under the terms of the contract or were not supported by the underlying research, and contained allegations that showed bias. EAC also found that the research provided by the contracted employees was a good body of data concerning the existing knowledge of voting fraud and intimidation. EAC staff developed a subsequent draft report to correct the problems mentioned above, to address the questions that this study sought to answer, and to address inconsistencies between the contracted employees' draft report and the research that was provided. The staff report included all of the contracted employees' and working group's recommendations. The staff report was adopted by EAC on December 7, 2007 during its public meeting and became the final and decisional report of the Commission on this issue. The final report as well as all of the underlying research conducted by the contracted employees are available on EAC's Web site, www.eac.gov.

EAC understands and appreciates that the a request from a Congressional committee is exempt from the provisions of FOIA, and as such, EAC provided the draft document despite the fact that the deliberative process exemption clearly applies to its contents.

Voter Identification Study

The second study about which you inquired was a study conducted by Rutgers University in conjunction with Moritz College of Law. Rutgers and Moritz served as contractors to EAC and produced this draft document pursuant to the provisions of the contract governing that relationship. A draft report was created by Rutgers University in conjunction with the Moritz College of Law (Ohio State University) to "...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voter identification procedures." The stated objective of the contract was to:

...obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

As with the voter fraud and intimidation study mentioned above, the contractors were provided guidance, information, and were directed by EAC personnel. The final product they delivered (draft report sought) was identified as "a guidance document for EAC adoption." Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action.

EAC reviewed and vetted of the draft document provided by Eagleton. Review of that document revealed data and analysis that caused EAC concern. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.⁴

On March 30, 2007, EAC decided not to adopt Eagleton's study and not to issue an EAC report based upon this study. The Commission did release all of the material provided by Eagleton at that time. In addition, EAC voted to engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Free Absentee Ballot Postage Study

Pursuant to Section 246 of the Help America Vote Act of 2002 (HAVA), EAC was directed to study and produce a report on the feasibility and advisability of a program that would provide absentee ballots that could be returned by the voter postage-free. HAVA directed that this report be delivered one year after the passage of HAVA, that is not later than October 29, 2003. On that date, EAC Commissioners had not yet been appointed and confirmed to fill their positions and to form the agency that is now EAC.

After the formation of EAC in December 2003, Congress provided an appropriation for FY 2004 in the amount of \$1.2 million dollars, which did not include sufficient funding for research activities. EAC received operational funding including some funding for research in its FY 2005 budget. Thus, in FY 2005, EAC developed an issued a request for proposals for a research contract to study this issue. No responsible bidders responded to the request for proposals. As such, EAC issued a subsequent request for

proposals in FY 2006. EAC received proposals and awarded a contract for the study of this issue. The work plan for this study shows that EAC expects to receive a final product from the contractor around _____. Documents related to this study including _____ are attached as Appendix "1" to this letter.

Military and Overseas Voting Study

Section 245 of HAVA directs EAC to study the risks and benefits of using the Internet to conduct voting. The only area in which this type of technology has been used at all to administer elections is for military and overseas citizens. As such, EAC has focused on using that experience as instructive for the possibility of Internet voting on a larger scale.

This study was directed to be completed within 20 months of the passage of HAVA, or no later than June 30, 2004. Again, the majority of this period for research passed prior to the existence of EAC and during the time of its initial budget which did not allow for research spending. In FY 2005, EAC approached the Technical Guidelines Development Committee (TGDC), the Federal advisory committee that researches and proposes voting system standards to EAC, to provide guidelines on security, core requirements and usability requirements for the use of the Internet in voting. The TGDC declined to include these as a part of their recommendations for voting system guidelines. TGDC considered the possibility of using the Internet for voting too risky and further believed that any voting system, Internet-based or not, must conform to the standards established by EAC based upon their research and recommendation.

Following this set back, EAC opted to seek a contractor to provide research in this area. We first conferred with the Federal Voting Assistance Program of the Department of Defense that several years ago worked on a substantial project aimed at establishing Internet voting for military members. In those conversations, we learned that there are many obstacles at the state and local level to implementing Internet-based voting. Based on this information, EAC determined that the best course of action was to find out what the current state of readiness and willingness is amongst state and local election jurisdictions to implement Internet-based voting. We can only develop standards for an appropriate system if we know what needs that system will have to serve and what obstacles it will have to overcome. A request for proposals was issued in FY 2006 and a contract was awarded. The work plan for that contract shows that a product from the contractor should be available to EAC around _____. Documents related to ongoing work on this study including _____ are attached as Appendix "2" to this letter.

Thank you for your requests and your interest in election administration. If you have further questions, please do not hesitate to contact me.

Sincerely,

Donetta Davidson
Chair

Jeannie Layson/EAC/GOV
04/12/2007 08:38 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.
cc
bcc
Subject FOIA Request

Today I will circulate a formal FOIA request to all of you. Please note that this request is from a journalist. The information I circulate will include a copy of the original request, which was made by the DC bureau of McClatchy Newspapers. An abbreviated version of the request follows:

"Copies of all emails between Job Serebrov and Election Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for EAC."

Some of you have provided similar information in the past, but I will need another complete submission that includes any related files that may have been generated since your last submission.

Please anticipate a formal request to be distributed to everyone today, and take note that the deadline to provide this information is April 30. Thank you.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

026892

Rosemary E.
Rodriguez/EAC/GOV
04/12/2007 12:25 PM

To Jeannie Layson/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, bwhitener@eac.gov,
Caroline C. Hunter/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Elieen L.
bcc
Subject Re: FOIA Request

History: This message has been forwarded.

I do not have anything. Thanks.

Rosemary E. Rodriguez
Commissioner
United States Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, D.C. 20005
Telephone: 202-566-3104
Facsimile: 202-566-3127
www.eac.gov
rrodriguez@eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
04/12/2007 08:38 AM

To Donetta L. Davidson/EAC/GOV, ghilman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC, jthompson@eac.gov,
klyndyson@eac.gov, psims@eac.gov, sbanks@eac.gov,
Elieen L. Kuala/EAC/GOV@EAC, Bert A.
Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV,
bwhitener@eac.gov, ~~stephen@eac.gov~~
cc
Subject FOIA Request

Today I will circulate a formal FOIA request to all of you. Please note that this request is from a journalist. The information I circulate will include a copy of the original request, which was made by the DC bureau of McClatchy Newspapers. An abbreviated version of the request follows:

"Copies of all emails between Job Serebrov and Election Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for EAC."

Some of you have provided similar information in the past, but I will need another complete submission that includes any related files that may have been generated since your last submission.

Please anticipate a formal request to be distributed to everyone today, and take note that the deadline to provide this information is April 30. Thank you.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW

026893

Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Donetta L.
Davidson/EAC/GOV
04/12/2007 01:33 PM

To Jeannie Layson/EAC/GOV@EAC, Gracia
Hillman/EAC/GOV@EAC, Caroline C.
Hunter/EAC/GOV@EAC, Rosemary E.
cc
bcc
Subject Re: FOIA Request

History: This message has been replied to.

Elle, I don't think I have any emails from Job or Tova, but to be on the safe side would you double check

Sent from my BlackBerry Wireless Handheld

Jeannie Layson

----- Original Message -----

From: Jeannie Layson
Sent: 04/12/2007 08:38 AM EDT
To: Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez;
Thomas Wilkey; Juliet Hodgkins; Karen Lynn-Dyson; Margaret Sims; Sheila Banks;
Elieen Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener;
stephanie.wolson@gmail.com
Subject: FOIA Request

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026895

Bryan Whitener/EAC/GOV
04/11/2007 05:49 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.
bcc

Subject FYI - Today's media inquiries (4-11-07, Wed)

Commissioners:

Today we had the following media inquiries:

(1) Commissioner Hillman was interviewed by Allison Keyes of NPR about the fraud report. Commissioner Hillman explained the scope of the contract and that we asked the contractors to do two things: define voter fraud and intimidation and provide recommendations for future study on these topics. The commissioner pointed out that we did not ask them for conclusions. The reporter asked if it was true that EAC was trying to suppress information about voter intimidation among minorities. The commissioner said she had worked all her life to prevent minorities from being intimidated at the polls, and that she was very anxious to embark upon a more expansive study on this very topic. The commissioner said the agency was transparent, and talked about our public meetings and the transcripts and testimony that were available to the public through our website.

NOTE: The interview will be aired repeatedly this evening on the five minute newscast at the top and bottom of the hour. To listen, tune into WAMU 88.5 FM American University Radio or Listen Live.

(2) Laura Strickler of CBS News wanted to know how much we spent on the fraud report and the voter ID report. We told her the fraud and intimidation research contract was for \$147,106, and the voter ID and provisional voting research contract was \$560,002. We explained that voter ID was only part of the contract. It also tasked Eagleton to provide information about provisional voting practices. In Oct. 2006, the Commission issued provisional voting best practices.

(3) Rich Wolfe of USA Today is working on a story on what states will have to do if Rush Holt's bill is enacted. He asked for details on what states and vendors are currently facing in order to transition from the 2002 to the 2005 voting system guidelines which we provided. Brian Hancock also spoke with him on background about the testing and certification program. Mr. Wolf wanted to know more details regarding the differences in the VSS 2002 and the VVSG 2005. Brian explained that the most significant changes related to accessibility and usability. His real concern was what practical effect the VVSG would have on elections 2008. We noted that more than the VVSG, the changes brought about by the EAC implementation of our Testing and Certification Program might have just as big an impact. We noted that we would not be grandfathering any NASED systems, and that if State law required EAC certification, the manufacturers would need to bring their voting systems through the EAC program for full testing. We also explained the implementation date of December 2005 and that as of that date, no systems could apply for testing to the 2002 VSS. We also made sure that Mr. Wolf understood that the EAC program was voluntary and that participation in the EAC certification program would be driven ultimately by the statutes, regulations or procedures in each of the States.

(4) Paul DeGregorio called to let us know he was interviewed by Adam Stichko of the St. Louis Post Dispatch about the fraud report. The reporter wanted to know if the reaction was a major setback for the agency. Paul said no, and that as EAC noted in its statement, it was going to improve its internal operations. He pointed out that sometimes EAC makes tough decisions that both sides of the aisle might not agree upon. But regardless, he said the agency has a responsibility to conduct due diligence, and make the tough decisions. He talked about what we have accomplished and the assistance we provide -- best practices, quick starts, VVSG and certification program.

(5) Meg Cox a freelance writer in Chicago asked what prompted EAC's Statement Regarding Research &

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Contracting Policies and whether something new happened in Congress to prompt the statement. We said that the statement contains the information.

(6) Ross Tuttle of Los Angeles was in town today and is working on a documentary series titled "The Freedom Files" which includes an episode on voting rights. He asked for EAC's statement in response to the NYT article on the release of the report. We sent him today's statement.

(7) Kat Zambon of electionline.org asked if other states have a similar partnership arrangement that the Secretary of State in Georgia has with Kennesaw State University to provide technical support for the state's voting machines, as well as outreach, education, ballot design, training and consultation. We said this is the only one that we are aware of.

(8) John Gideon of Voters Unite and Brad Blog had the following questions, and Jeannie's responses follow:

A. How does the EAC see their position as a "clearinghouse" of information as required by HAVA? We follow the mandates of HAVA regarding our responsibilities to conduct studies about election administration issues. The results of those studies make up the "clearinghouse." B. What responsibility does the EAC have with regard to warning states about what may be security vulnerabilities in specific voting systems? The EAC certification program will collect anomaly reports (go here to view the form), which we will then investigate and share with election officials and the public. C. Chairwoman Davidson has said that the EAC's middle name is "Assistance". How does ignoring potential security issues fit into that theme? As I mentioned above, monitoring anomalies is part of our certification program. As we've discussed before, the system you are referring to was not certified by EAC. If the manufacturer of this system wants an EAC certification for this system, it would have to successfully complete our certification process and adhere to all of its rules. EAC did not grandfather any systems already in use (meaning that we did not automatically issue certifications or transfer NASED qualifications to existing systems), including the one you referenced. Mr. Gideon replied that he was amazed that instead of answering the questions I conflated the certification of voting systems with a security vulnerability that is in existence across the country. He asserted this issue had nothing to do with the EAC certification program. I replied that the very fact that we have set up a system to track voting system anomalies is evidence that we think monitoring performance is very important. Again, as we have discussed many times, we did not certify this voting system. If it successfully completes EAC's certification program in the future, then it would be subject to our rules and conditions, and if a problem occurs we would notify the election community and the public.

###

Caroline C. Hunter/EAC/GOV
04/11/2007 03:15 PM

To Jeannie Layson/EAC/GOV@EAC
cc EAC Personnel, stephanie.wolson@gmail.com
bcc
Subject Re: EAC Statement

History This message has been forwarded

Rick Hasen
Sent by:

04/11/2007 02:08 PM

To election-law

cc

Subje Indiana Secretary of State Rokita , the EAC Controversy, and the Incidence of
ct Voter Fraud

<http://electionlawblog.org/archives/008228.html>

Indiana Secretary of State Rokita , the EAC Controversy, and the Incidence of Voter Fraud

At a recent AEI-Brookings Election reform project event, I tangled a bit with Indiana Sec. of State Todd Rokita, including over the question whether the National Association of Secretaries of State will continue to take its unfortunate position that the EAC should be disbanded. Sec. Rokita has also been a strong supporter of voter identification laws, and his state's law has been subject to challenge in the Crawford case (see some of my analysis of the cert. possibilities for this case).

I did not realize until now (or perhaps I forgot) that Sec. Rokita was a member of the EAC's working group on vote fraud issues (see page 4 of pdf).

In the draft Seberov/Wang report leaked to the NY Times, Sec. of State Rokita is quoted as making some troubling remarks about conducting research into possible voter fraud, a key empirical question not only for the constitutional issue in *Crawford* but for election administration more generally. On page 28 of the report, Sec. Rokita is quoted as saying *both* that he believes the EAC should be in business of designing its own methodology for figuring out the incidence of voter fraud (rather than relying on existing assessments of the amount of fraud) *and* that the EAC should be "very careful" not to make the "wrong selection in the eyes of some group" of a political scientist to conduct such a study.

026898

In my view, there's no way that the EAC can design a sound methodology for a new study of voter fraud without the help of well-trained political scientists (or other social scientists well trained in appropriate research methods). It cannot subject the selection of such a political scientist to some kind of litmus test that excludes a good political scientist whose choice offends some interest group. This is part of the EAC's new pathology generally: it is afraid to release any data that might offend some group or take a side. (Under pressure, the EAC has now released that Eagleton/Moritz study on voter id and turnout that it has disowned).

In the end, I get the sense that no amount of evidence from the most eminent political scientist would convince Sec. Rokita that voter fraud at the polling place is not a major problem. From the report: "Mr. Rokita stated that, 'We're not sure that fraud at the polling place doesn't exist. We can't conclude that.'"

With the apparent demise of the American Center for Voting Rights (whose Thor Hearne was also in the EAC working group), Mr. Rokita appears to be fighting this battle alone on the EAC.

A more general lesson from the EAC controversy: There has been much writing in recent years by Chris Elmendorf, Heather Gerken, and myself on the use of election reform commissions and other devices to get changes in election administration rules. I fear that we will be studying the EAC's failures for many years to understand how *not* to engage in meaningful election administration reform.

--
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Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
04/11/2007 10:58 AM

To EAC Personnel
cc
bcc
Subject EAC Statement

History

This message has been forwarded.

Hello everyone,
I'm sure you have read the article in today's NYT about the voter fraud report this agency issued. Today, Congressmen Hinchey and Serrano have issued the following statement. Very shortly, EAC will post and distribute the attached statement to articulate our role and approach to conducting research and the steps we will take to improve our process. Please let me know if you have any questions about this, as I am sure we will all receive phone calls today about this issue. You may also direct people with questions to the statement that will be on the website. I will keep everyone informed as this situation evolves.



2007-11 (4-11-07) Statement on Research & Contracting Policies.pdf

For
Immediate
Release

April 11, 2007

Hinchey, Serrano Urge Non-Partisanship, Greater Transparency at Election Assistance Commission

Washington, DC - Today, Congressmen Maurice Hinchey (NY-22) and José E Serrano (NY-16) urged the Election Assistance Commission (EAC) to act with greater transparency and without partisanship. The comments from the congressmen came as the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released.

"The EAC has an obligation to be forthright with the American people and operate transparently and in a non-partisan manner," said Congressman Hinchey, who requested the draft report from EAC Commissioner Donetta L. Davidson during subcommittee hearing last month. "The draft report was commissioned with taxpayer dollars upon a mandate from Congress so that we could learn more about voter fraud and intimidation. The need for this report is even more clear when we see the way in which the Bush administration is carrying out the electoral process and how this system is sliding towards corruption. In hiding a draft report from the public that is significantly different from the final version, the EAC has created a lot more questions than it has answered while stunting debate on the issue. In order for our democracy to function properly it is essential that our elections are free of any corruption and that includes ensuring

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that the EAC does not work to benefit one political party over the other. To achieve that goal we must have all the facts and opinions on the table, not just some of them. The EAC must never limit discussion and debate."

"The EAC is charged with helping to ensure our elections are trustworthy and administered fairly," said Congressman Serrano, who is Chair of the Appropriations Subcommittee that oversees the EAC budget. "I'm concerned if changes were made to the report on voter fraud because of partisan bias rather than impartial analysis. When you read the draft report side-by-side with the final version, it is clear that important conclusions of the experts who wrote the draft report were excluded from the final product. Among the excluded information was an analysis that undermines the notion that voter fraud is rampant."

"I am concerned that the EAC did not publicly release the taxpayer-funded draft report, and I worry that political considerations may have played a role. We cannot have a politicized EAC, or one that yields to outside pressure. Our democracy, and the American people's faith in it, is far more important than any short-term political advantage."

The draft report was written by outside experts under contract with the EAC. The final report was entitled "Election Crimes: An Initial Review and Recommendations for Future Study" and was issued on December 7, 2006.

The EAC is an independent bipartisan commission created by the 2002 Help America Vote Act in order to disburse funds to the states for the purchase of new voting systems, certify voting technologies, develop guidelines and serve as an information resource for election administration.

Jeannie Layson
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U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

EAC Statement Regarding Research and Contracting Policies

Commission to Review Internal Procedures

For Immediate Release
April 11, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – The Help America Vote Act of 2002 (HAVA) directs the Election Assistance Commission (EAC) to serve as a national clearinghouse and resource by, among other things, conducting studies with the goal of improving the administration of federal elections. To fulfill this mandate, the EAC has entered into contracts with a variety of persons and entities. Reports adopted by the EAC, a bipartisan federal entity, are likely to be cited as authoritative in public discourse. Prior to the EAC's adopting a report submitted by a contractor, the EAC has the responsibility to ensure its accuracy and to verify that conclusions are supported by the underlying research.

The Commission takes input and constructive criticism from Congress and the public very seriously. We will take a hard look at the way we do business. Specifically, we will examine both the manner in which we have awarded contracts and our decision-making process regarding the release of research and reports. The EAC takes its mandates very seriously, and we will continue to move forward in a bipartisan way to improve the way America votes.

EAC is an independent bipartisan commission created by HAVA. It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

###

026901

Jeannie Layson/EAC/GOV
04/10/2007 06:30 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC
cc EAC Staff

bcc

Subject NEED YOUR APPROVAL: Statement for tomorrow

Commissioners,

As you know, the NYT will run an article tomorrow about EAC, and I think the focus will be on our recent stumbles, and it will speculate about what kind of role you've been assuming. I think it will portray us as under fire and struggling to regain our footing due to mismanagement and a late start. Also, tomorrow Hinchey and Serrano will release the draft fraud report along with a press release. I'd like to release and post the following statement as soon as their press release hits the street. Please let me know if you agree with this statement. Press log follows.

"EAC's policy is to thoroughly review any information submitted by contractors. That review involves due diligence to ensure that every report EAC adopts and issues is based on accurate information. We have a responsibility to take the time to get things right, and to make sure we can stand behind and each and every report we issue.

"However, we take input from Congress and the public very seriously, and we will take a hard look at the way we do business. If changes need to be made to increase transparency or speed up our review process, we will make those changes. EAC takes its responsibilities very seriously, and we will continue to move forward in a bipartisan way to improve the way America votes."

1. Ian Urbina of the NYT interviewed commissioners Davidson and Hillman about the fraud report. Both told him that EAC has a responsibility to make sure information we release is accurate, and that means conducting due diligence. The chair pointed out that we now have bi-partisan subcommittees to review research, budget issues and certification. She pointed out that we have a responsibility to take the time to get things right. Comm. Hillman answered his questions about specific passages, and explained why we made changes and how some of the comparisons he was making wasn't germane. Ray Martinez called and wanted us to know that he was also interviewed by Ian, and Ray told him he has always thought the agency should make final contractor reports available to the public. My responses to additional questions he posed follow:

A. In the draft on page 7, sec. bullet, it says "there is widespread but not unanimous." In the final, page one, it says "It is clear from the review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation." Reason for the change from draft to final language -- The statement in the draft report is based on the interviews only, not on the entire body of research that was conducted. The latter statement in the final report is based upon the entire body of research, including the articles, books and cases which constitute the appendices. Also, the sentence from the draft is in the section that describes the interviews. The sentence in the final version is in the executive summary, which focuses on the entire project, not just the interviews.

B. In the draft on page 7 it says there is "evidence of some intimidation." In the final, page 7, it says "voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation." Reason for the change from draft to final language -- After reviewing all of the data provided by the consultants, EAC determined that there is little agreement as to what constitutes "voter intimidation." There is a difference between actionable intimidation (criminal) and civil issues and activities that are legal in both the criminal and civil context. No one is debating that there is some evidence of intimidation. The question is how intimidation is defined (criminal, civil, both, neither).

C. In the draft on page 7, second bullet, it says "most people believe that false registration forms have not resulted in fraud." This sentence wasn't supported by the entire body of research. Regarding the sentence in the final report: "For example, the interviewees largely agreed that absentee balloting is subject to the

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greatest proportion of fraudulent acts, following by voting buying and voter registration fraud." This language was taken from the first bullet on page seven of the draft report, which begins "There is virtually universal agreement that absentee ballot fraud is the biggest problem..."

D. In the draft, the consultants offered conclusions up front. In the final version, these conclusions either ended up in the appendices or elsewhere in the document. Why? EAC organized the content of the document in the manner that seemed most suitable. For instance, all of the recommendations (consultants' and working group's) are grouped together. We added language that reflected the commission's decision to adopt six of the recommendations.

E. Was this voted on in public? Was it unanimous? Three commissioners -- Paul DeGregorio, Gracia Hillman, and Donetta Davidson unanimously approved the final report at a public meeting on Dec. 7, 2006. Go here for details.

F. Who managed this project? Initially, the project was managed by EAC Dir. of Research Karen Lynn-Dyson, but early on the project was shifted to EAC Election Research Specialist Margaret Sims.

G. When did the work begin and when was it concluded? The consultants began work in Sept. 2005. They delivered sections of the draft document in phases (all dates are 2006). Interview conclusions were delivered to EAC in April; future suggestions in June; everything else (except next item) delivered in July; and literature review arrived in August.

H. What are the political affiliations of Karen and Margaret? Who appointed them? I don't know Karen's or Margaret's political affiliation. They are not political appointees -- they are federal employees, not appointed by the commission but hired by the executive director.

I. What about Julie Thompkins? Julie was appointed by the commission. Go here to read the press release about her appointment. The last person she worked for was a Republican, but Julie's appointment to the EAC was not on a partisan basis. She was appointed by a unanimous vote of the full (four commissioners) commission.

J. Explain the circumstances surrounding the only commission vote that wasn't unanimous. HAVA gave EAC the mandate under the National Voter Registration Act (previously held by FEC) to develop a federal voter registration form that must be accepted and used by states covered under the Act. As part of that mandate, EAC routinely updates the state instructions on the form. Instructions provide information about voting rules and laws in the states.

Arizona requested a change to the federal form's state instructions reflecting Prop. 200. Staff routinely reviews and approves state requests regarding changes to the instructions. In this case, the executive director denied Arizona's request. Paul DeGregorio (R), who was EAC chair at the time, put the matter to a vote, proposing that the Commission accommodate Arizona's proof of citizenship procedure by amending the state specific portion of the federal voter registration form. The vote failed along party lines, 2 - 2. HAVA requires any measure to be carried by at least three votes. Therefore, the measure failed.

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026903

Jeannie Layson/EAC/GOV
04/06/2007 05:27 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC
cc EAC Staff

bcc

Subject FYI ONLY: Today's media inquiries (04-06-07)

1. I confirmed for Matt Murray of Roll Call that Comm. Hunter is a Republican and that she came to EAC in March. He asked for our FY budget figures, which I sent to him. He asked if it was true that we bungled the certification of voting systems in reference to the CIBER situation. I said that it had nothing to do with certifying voting systems, and explained the entire interim process and the reason we had to implement after NIST told us they wouldn't get labs accredited until late 2006 and NASED's termination of its program. I said we announced this program and our decision to invite the three labs to apply at a public meeting in 2005, and that we've had several public meetings about the interim program, as well as sending updates to our stakeholders. He asked me how I would characterize the criticism surrounding CIBER, and I said the feedback we received was that we should have been more proactive in reminding people that CIBER had not received interim certification, that it was still pending. I emphasized that we have not certified any voting systems, so it would be incorrect to state that we had "bungled" that process. He asked if we released the Eagleton data after Hinchey urged us to, and I said yes, but told him that the chair announced that we would complete this project w/n 30 days at a public meeting in Feb. in which Eagleton testified and answered questions about their methodology. I also gave him the following quote: We have a responsibility to take the time to get things right. However, we understand the criticism and we are taking a hard look at our internal processes. We will identify what changes need to be made, and we will make them. We take comments from Congress very seriously, and we appreciate their input and their willingness to give us what we need to get the job done.

2. The chair was interviewed by Pam Zubeck of the Gazette (CO) about what she's seeing regarding voting by mail. The chair talked about the trends in the NW, and how it was important to make sure states have accurate and up to date lists. She noted that the introduction of statewide databases will be especially helpful to those states. The reporter asked if CO sends out ballots to inactive voters, and the chair said yes, and told her it is a federal requirement that voters must be notified before they are removed from voter rolls.

3. Freelance journalist Meg Cox, who is writing an article for Op-Ed News, had the following questions, and my responses follow: a) You said that the Wang/Serebrov report has not been released because it was predecisional. Was the Moritz/Eagleton report released because it was not predecisional? The Moritz/Eagleton report was a predecisional document. The commissioners took an action not to adopt a final report based upon the Moritz/Eagleton report, but to release all the predecisional information (the draft report).

b) I understood you to say that the December EAC report includes all of the Wang/Serebrov recommendations but not all of the Wang/Serebrov findings. Is that correct? The report does include all of their recommendations, as well as the research they reviewed, which includes books and articles and court cases. The contract with the consultants did not ask them to produce findings. It was an initial effort to identify what relevant information is available, define voter fraud and voter intimidation, and make recommendations to EAC regarding future study.

c) I understood you to say that EAC staff added results of their own research to the December EAC report. Is that correct? Yes, EAC conducted additional research to further clarify the definitions of "voter fraud" and "voter intimidation." On page 13, you will see the results of the EAC research, which resulted in defining the scope of future study and new terminology for these topics -- election crimes. EAC staff reviewed the report for accuracy, for grammar and added language that reflected the commission's decision to adopt the final version based upon the initial research provided by the consultants. New language was also added to communicate the commission's decision adopt six of the 16 recommendations put forth by the consultants.

d) If I'm correct on questions 2 and 3, would it be accurate to say that readers of the December report

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cannot tell how much of that report does and does not reflect the original Wang/Serebrov findings? Again, the contract with the consultants did not ask them to produce findings, nor was that the scope of the contract. It was an initial effort that tasked them to identify what relevant information is available, define voter fraud and voter intimidation, and make recommendations to EAC regarding future study. The research (Appendix D, 197 pages; and Appendix B, 57 pages) and all of their recommendations are included in the final report.

e) I called earlier today requesting the Wang/Serebrov report, and you sent me the December EAC report. I am concerned that if I had not already been researching this closely, I would have thought that you'd sent me the Wang/Serebrov report and would have reported incorrectly that you had. Does the EAC have any comment on this manner of repoding to press inquiries? (I contacted you to request the report after I read in the Statesman Journal of Salem, Oregon, an article by Marie Cocco that says: "The bipartisan commission didn't widely release the consultants' review, but makes it available on request." Did the EAC indeed give Ms. Cocco a copy of the "consultants' review"? Or has she misunderstood you in the way I'm concerned about?) I sent you a link to the "EAC report" because it is what was adopted by the commission based upon the research conducted by the consultants. The final report clearly states how it was compiled, includes bios for both of the consultants, their research and summaries of their interviews. Regarding Ms. Cocco, I explained the entire process to her. I provided the staff update on the project which was presented at a public meeting in May 2006 and the final report, which is posted on the EAC website. Regarding "this manner of responding to press inquiries," I have forwarded your comments to my supervisor so he can review my performance regarding the handling of your inquiry.

f) I understood you to say that the EAC did not release the Wang/Serebrov report in its original form because the EAC has to do due diligence and its staff is small. Do I understand you correctly? As a small agency of 23 employees, including the four commissioners, it is necessary for the agency to contract with consultants to gather the initial data for research projects. After EAC receives the initial data, the agency reviews the data for accuracy. What form of due diligence does the EAC's staff routinely conduct on research that is contracted out to experts before that research is released? You mentioned "vetting" the research. What does that vetting entail? It depends on the project, but in every case, the agency has a responsibility to make sure the information it receives from any contractor is accurate. In this case, EAC staff read every article cited by the consultants and reviewed the contents of every interview they conducted. Appendix C contains the interview summaries, and the changes EAC made are clearly footnoted. Regarding other research projects, if it is information directly related to a mandate within the Help America Vote Act (HAVA), staff will make sure that the information is consistent with the law. If the research focuses on election laws throughout the country, we make sure the laws are cited correctly and that state legislatures haven't changed or amended these laws since the research was conducted. (As you probably know, there have been many new election laws introduced at the state level since 2004.) Throughout the process, we review for grammar as well as make sure the document flows and is arranged logically -- the basic tenets of editing.

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