

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.

015188

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.

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015189

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.

015190

(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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015191

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

To [REDACTED] m  
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  
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## **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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015193



**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

015194

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.

015195

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.

015197

Commissioner Davidson

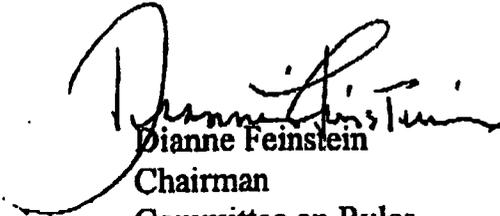
- 2 -

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

015198

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
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**COMMITTEE ON HOUSE ADMINISTRATION**

- CHAIR — SUBCOMMITTEE ON ELECTIONS

CHAIR, CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION

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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.

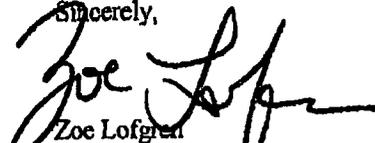
First, the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released. The EAC released report "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.

015203



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

MEDIA CONTACT:  
**Philip Schmidt** (202)  
225-4361

FOR IMMEDIATE  
RELEASE:  
Apr 11, 2007

## PRESS RELEASE

# 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.

“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.”

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015204

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###

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

015205

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, Elieen 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

015206

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

015207

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](http://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

015208

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.<sup>4</sup>

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.

Sincerely,

Donetta Davidson  
Chair

015213

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  
[REDACTED]

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

015214

----- 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;

**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](http://www.eac.gov)

015215

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

Donetta L. Davidson/EAC/GOV

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

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Elle L.K. Kuala

015216

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  
[REDACTED]

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 [REDACTED]

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015217

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

015218

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](http://www.eac.gov)

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

**From:** Donetta L. Davidson  
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**To:** Elieen Kuala  
**Subject:** Re: FOIA Request

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

015219

Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
[REDACTED]

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 [REDACTED]

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  
[REDACTED]

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 [REDACTED]

015220

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;  
Eliien Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener;

**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](http://www.eac.gov)

015221

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

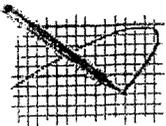
Jeannie:

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, ghillman@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

015222

Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)



- AdvBdsletterDRAFT.doc

015223

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

015224

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

015225

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.

015226

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

015227

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

015228

contractors (“consultants”) constitute intra-agency documents.<sup>1</sup> 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.<sup>2</sup> The courts have made this determination after recognizing that agencies have a special need for the opinions and recommendations of temporary consultants.<sup>3</sup> 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.<sup>4</sup>

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](http://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.”

---

<sup>1</sup> 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).

<sup>2</sup> Klamath, at 10.

<sup>3</sup> Hoover, 611 F.2d at 1138.

<sup>4</sup> 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](http://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.<sup>4</sup>

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,

015233

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:

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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

015235

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, ghillman@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,  
cc  
Subject FOIA Request

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"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

015236

Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

015237

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;  
Eileen Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener;  
**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.

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015238

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 &

015239

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.

###

015240

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 <rick.hasen@lls.edu>  
Sent by:

owner-election-law gl@majordomo.lls.edu

04/11/2007 02:08 PM

To election-law <election-law@majordomo.lls.edu >  
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 the make the "wrong selection in the eyes of some group" of a political scientist to conduct such a study.

015241

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

015242

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

015243

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.

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015244



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.*

###

015245

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

015246

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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015247

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

015248

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 replying 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.

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

015249

Jeannie Layson/EAC/GOV  
04/10/2007 01:11 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc Tom Wilkey, jthompson@eac.gov, psims@eac.gov,  
stephanie.wolson@gmail.com, sbanks@eac.gov, Elieen L.  
Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC  
bcc

Subject NYT Interview Request

History:

✉ This message has been replied to.

Commissioners,  
Ian Urbina of the NYT is working on a story about our fraud report. He has the original, and he's asking questions about how we arrived at the final version, as well as wanted to confirm that there were intense discussion among the commissioners about whether to release everything.

Madam Chair--I need to know if you can speak with him in the next 30 min. If not, I need to know which commish would be available to speak with Ian. We are under seige, and I think it's very important to have a commish perspective/input in this piece.

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015250

Bryan Whitener/EAC/GOV  
04/04/2007 05:31 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 ( 4-4-07, Wed )

Commissioners:

For the second time in a month, Dan Seligson of Electionline.org requested the same document on voter fraud that was requested of EAC by the House Appropriations Subcommittee on Financial Services. Again, we said that the document that was requested by the subcommittee is considered predecisional under the Freedom of Information Act (FOIA), but that of course we provided it to the subcommittee because they are exempt from FOIA. We noted however, that the EAC adopted a final report on election crimes at our Dec. 7, 2006 public meeting. We said that the final report was based on the research provided by the consultants and additional information gathered by EAC staff and that it is available on our website [here](#). We said that the report includes all of the data reviewed by the consultants. (links on page 24.) and that it also includes all of the recommendations for further study that the consultants put forth. We said that ultimately, the commission adopted four of those recommendations and provided the press release link [here](#). We said that as a small agency, EAC often works with contractors, consultants and experts to gather data and conduct research. After the commission receives the initial data or information, staff then works to incorporate this information into a final EAC report.

###

015251

Jeannie Layson/EAC/GOV  
12/12/2006 04:57 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Need info from you for annual report 

History:  This message has been replied to

Elle,

I need a more complete TGDC roster, including their titles and affiliations. Please see last year's annual report, page 45. Again, I need a complete list of those who served in Fiscal Year 2006, which covers Oct. 1, 2005 through Sept. 30, 2006. Anyone who was not serving as of Sept. 30, I will list them as former members. Please let me know if you have any questions.

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



Elieen L. Collver/EAC/GOV  
12/12/2006 04:45 PM

To jlayson@eac.gov@EAC  
cc bwhitener@eac.gov  
Subject Re: Need info from you for annual report 

Here is a list of the cities Commissioner Davidson has visited on official business for FY06:

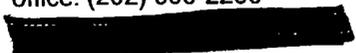
San Francisco, CA  
Portland, OR  
Albuquerque, NM  
Hot Springs, VA  
Bismark, ND  
Cleveland, OH  
Seattle, WA  
Austin, TX  
Denver, CO  
Gaithersberg, MD  
Caper, WY  
Columbia, SC  
Santa Fe, NM  
San Diego, CA  
Eugene, OR  
Chicago, IL  
Hartford, CT  
Providence, RI  
Carson, CA  
St. Louis, MO

Roster of TGDC members who served during FY06:

015252

Dr. William Jeffrey  
John Gale  
Alice Miller  
Sharon Turner-Buie  
Helen Purcell  
Jim Elekes (*resigned July, 26, 2006*)  
J.R. Harding (*resigned July 26, 2006*)  
H. Stephen Berger  
Dr. Brittain Williams  
Paul Craft (*replaced August 2, 2006*)  
Patrick Gannon  
Whitney Quesenberg  
Dr. Ronald Rivest  
Dr. Daniel Schutzer

Elle L.K Collver  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256

  
www.eac.gov  
Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
12/12/2006 09:03 AM

To Elieen L. Collver/EAC/GOV@EAC  
cc bwhitener@eac.gov  
Subject Need info from you for annual report

Elle,  
Per Bryan's earlier emails, I need several things from you ASAP for the Annual Report, which covers everything from Oct. 1, 2005 to Sept. 30, 2006. 1) A list of cities the commissioner visited during that time period; 2) The TGDC roster as of Oct. 1, 2005. I also need a list of members who resigned during that time period so I can note their service, even though they won't be listed on the roster. In addition, please make sure her bio on the website is current, as that is what will be in the annual report.

Also, my records indicate that I did not receive a response from you regarding my FOIA request. Please note that it specifically asks for a response from everyone, even if the response is "no records." I'm assuming you have checked with the commissioner to see if she has any responsive records. Original request is below. Please let me know if you have any questions or need clarification about any of this. Thank you.

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.

015253

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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Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

015254

Juliet E. Hodgkins/EAC/GOV  
11/28/2006 01:35 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
bcc Elieen L. Collver/EAC/GOV  
Subject Call in number for tomorrow's briefing on the Voting Fraud and Voter Intimidation Report

I have made arrangements for a conference call for tomorrow's briefing. There are four lines available. That would be sufficient for Tom, Donetta, and me (if necessary). In addition, there is one additional line in the event someone else needs to call in. If there will be more than the callers identified above (Tom, Donetta, and me) please let me know.

Here is the call in number and pass code:

[REDACTED]

[REDACTED]

The call will be open from 10:30 to 12:00 (just in case we run over the one hour scheduled meeting).

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

015255

Jeannie Layson/EAC/GOV  
12/12/2006 09:03 AM

To Elieen L. Collver/EAC/GOV@EAC  
cc bwhitener@eac.gov  
bcc

Subject Need info from you for annual report

History:  This message has been replied to and forwarded.

Elle,

Per Bryan's earlier emails, I need several things from you ASAP for the Annual Report, which covers everything from Oct. 1, 2005 to Sept. 30, 2006. 1) A list of cities the commissioner visited during that time period; 2) The TGDC roster as of Oct. 1, 2005. I also need a list of members who resigned during that time period so I can note their service, even though they won't be listed on the roster. In addition, please make sure her bio on the website is current, as that is what will be in the annual report.

Also, my records indicate that I did not receive a response from you regarding my FOIA request. Please note that it specifically asks for a response from everyone, even if the response is "no records." I'm assuming you have checked with the commissioner to see if she has any responsive records. Original request is below. Please let me know if you have any questions or need clarification about any of this. Thank you.

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:

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

Jeannie Layson  
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www.eac.gov

015256

Jeannie Layson/EAC/GOV  
12/12/2006 09:26 AM

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

History

This message has been forwarded.

That also applies to the Eagleton contract, which is voter ID. Also, please check with the commissioner to make sure she doesn't have any responsive records.

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



Elieen L. Collver/EAC/GOV  
12/12/2006 09:23 AM

To jlayson@eac.gov@EAC  
cc  
Subject Re: FOIA Request

Jeannie,

I don't have any written correspondence regarding the Voter Fraud issue/Tova or Job correspondence.

I did have a few phone calls that came in from one of the members of the working group. But that's it as far as correspondence.

Elle

Elle L.K Collver  
U.S. Election Assistance Commission  
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Washington, D.C. 20005  
office: (202) 566-2256  
www.eac.gov  
Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
11/28/2006 10:27 AM

To EAC Personnel  
cc  
Subject FOIA Request

015257

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.

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

Jeannie Layson  
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Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

015258

Juliet E. Hodgkins/EAC/GOV  
11/16/2006 11:34 AM

To Eileen L. Coliver/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Matthew  
Masterson/EAC/GOV@EAC

cc

bcc

Subject Meeting with Commissioners re: Draft Voter Fraud and Voter  
Intimidation Report

History: This message has been replied to and forwarded.

I need to set a meeting with the Commissioners some time during the week of Nov 27 to discuss their comments/issues on the draft voter fraud/voter intimidation report. Please let me know when they are available either in person or by phone. My only limitations at this point are Wednesday, 12:00 -2:00 and Friday, 9:00 - 10:00.

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

015259

Jeannie Layson/EAC/GOV

To EAC Personnel

11/28/2006 10:27 AM

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.

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

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015260

Jeannie Layson/EAC/GOV  
04/10/2007 01:52 PM

To Donetta L. Davidson/EAC/GOV  
cc  
bcc  
Subject interview

We asked them to do two things: 1) define voter fraud and voter intimidation; and 2) provide recommendations for future study.

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015261

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

To EAC Personnel  
cc  
bcc  
Subject EAC Statement

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 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

015262

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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Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

015263



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.*

###

015264

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 &

015265

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.

###

Rosemary E.  
Rodriguez/EAC/GOV  
04/12/2007 08:28 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC  
cc Sheila A. Banks/EAC/GOV@EAC, Elieen L.  
Kuala/EAC/GOV@EAC, "Stephanie Wolson"  
[REDACTED] Fabre, Stacie"  
bcc [REDACTED]

Subject Re: Draft letter to board of advisors and standards board [REDACTED]

Pls see the front page of today's NYTimes--scant evidence of voter fraud

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/12/2007 07:31 AM EDT  
**To:** Caroline Hunter; Gracia Hillman; Donetta Davidson; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Stephanie Wolson"  
[REDACTED] "Fabre, Stacie" [REDACTED] >; Thomas  
Wilkey; Gavin Gilmour; Jeannie Layson  
**Subject:** Re: Draft letter to board of advisors and standards board

From the variety of comments it is not clear to me that there is a common understanding on how to proceed and what we should say -- or at least I am not comfortable that I understand how you all want this letter to read. So, I would suggest we spend a bit more time on the theme this morning so that I can efficiently and accurately edit the letter so that we can get it out timely today.

-----  
Sent from my BlackBerry Wireless Handheld

Caroline C. Hunter

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

**From:** Caroline C. Hunter  
**Sent:** 04/12/2007 07:27 AM EDT  
**To:** Gracia Hillman; Juliet Hodgkins; Donetta Davidson; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Wolson" [REDACTED];  
"Fabre, Stacie" [REDACTED] s Wilkey; Gavin Gilmour;  
Jeannie Layson  
**Subject:** Re: Draft letter to board of advisors and standards board

Keeping it narrow to the current controversy is ok with me, but I think we cannot assume people know how the recent events unfolded, ie Cong released, NYT wrote, etc.

Gracia Hillman

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

**From:** Gracia Hillman  
**Sent:** 04/12/2007 07:22 AM EDT  
**To:** Caroline Hunter; Juliet Hodgkins; Donetta Davidson; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Wolson" [REDACTED];  
"Fabre, Stacie" [REDACTED] Thomas Wilkey; Gavin Gilmour;  
Jeannie Layson  
**Subject:** Re: Draft letter to board of advisors and standards board

It appears there will be a substantive rewrite so I will save my edits for that version.

However, my original suggestion was to communicate with the boards about the current controversy, not just research in general. Otherwise it looks like we are sidestepping the problem at hand, which is why we are writing to the boards in the first place.

015267

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

History:  This message has been replied to.

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

015268

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

015269

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.

Jeannie Layson  
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Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

015270

Jeannie Layson/EAC/GOV  
04/05/2007 04:53 PM

To Donetta L. Davidson/EAC/GOV, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. EAC Staff

bcc

Subject FYI ONLY: Today's media inquiries (04-05-07)

1. Matthew Murray of Roll Call interviewed Commissioner Hunter about the voter ID report. He asked her why the commission declined to adopt it, and she explained that we thought it was important to look at more than one year and that the commission had questions about the methodology -- two analyses produced two conclusions and the state comparisons (reading from the commission statement). She said it was the EAC's responsibility to conduct due diligence and make sure the data was accurate. He asked why it took so long to reach a decision, and that some groups were saying we purposely did not act before the Nov. elections. The commissioner explained that we were reviewing the data and during that time several independent experts also reviewed the information. He wanted to know if Eagleton discussed their methodology with us, and the commissioner said yes. He asked how much it cost, the commissioner told him \$560,000, and explained that the contract also included research on provisional voting which resulted in a set of best practices. He asked how EAC will prevent this kind of thing from happening in the future, and the commissioner said we are going to take a much more thorough approach, including making sure the methodology is approved by everyone before the process begins and that we will be constantly updated as the research progresses. He asked if the research didn't produce what we thought it would, and she said the issue was that we had concerns about the methodology. She pointed out that the commission voted to make it public so people could examine it and come to their own conclusions. He asked if we had refused to release this in the past, and I explained that while we were reviewing the information it was a pre-decisional document, but that along with the commission's decision not to adopt the report, they took action to make it public. I pointed out to him that this was an unanimous decision reached by two dems and two reps, and that they also unanimously decided to make it public. I told him we had public meetings about this project, in which the consultants were asked questions about the methodology.

Jeannie Layson  
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015271

Rosemary E.  
Rodriguez/EAC/GOV  
04/04/2007 05:25 PM

To Jeannie Layson/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC  
bcc

Subject Re: Roll Call Interview Request for Tomorrow 

Yes please and thanks!

Jeannie Layson

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

**From:** Jeannie Layson  
**Sent:** 04/04/2007 05:00 PM EDT  
**To:** Donetta Davidson; Caroline Hunter; Rosemary Rodriguez; Gracia Hillman  
**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Juliet Hodgkins  
**Subject:** Roll Call Interview Request for Tomorrow

Commissioners,

Matt Murray of Roll Call wants to interview one of you tomorrow via phone (he's available all day) about the voter ID report. Commissioner Rodriguez - as the vice chair, you would be up, but since you're out tomorrow, do you want Commissioner Hunter to do the interview? The reporter has the following questions:

1. What fiscal year money did we use to pay for the study? A: Fiscal Year 2005
2. What was the EAC's budget during that fiscal year? A: \$13.8 million

We should assume that his angle is that this was a waste of money -- what does EAC have to show for two years of work and \$560,000 out of a budget of \$13.8 million? He also mentioned that the interest groups are not pleased that we delayed releasing this information, and they are not happy we did not adopt a report. I recommend that we stick with the talking points I circulated last week, which are attached.

The bottom line is that we did receive value from this contract, which included provisional voting research, which culminated in a set of best practices. And yes, the commission decided that the voter ID data provided more questions than answers, and that's why it voted to conduct a much more expansive look at this important topic. However, it also made all of the information available to the public.

Remember, many voter ID laws have changed since 2004, and that also has instructed us how to move forward.

EAC should stand firm on its decision, talk about our next steps to conduct a more extensive study, and stress that we released everything to the public.

Please let me know if you agree with this approach.

[attachment "VoterIDtalkingpts.doc" deleted by Rosemary E. Rodriguez/EAC/GOV]

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

015272

Jeannie Layson/EAC/GOV  
03/30/2007 08:33 PM

To "Donetta Davidson" <ddavidson@eac.gov>, "Gracia Hillman" <ghillman@eac.gov>, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. cc "Tom Wilkey" <twilkey@eac.gov>, "Karen Lynn-Dyson" <klynnnyson@eac.gov>, "Julie Thompson" <jthompson@eac.gov>

bcc

Subject Hinchey statement

Hinchey Statement on U.S. Election Assistance Commission's

Release of Report on Voter Identification Issues

Washington, DC - Congressman Maurice Hinchey (D-NY) today released the following report in response to the U.S. Election Assistance Commission's (EAC) release of a report on voter identification issues that was submitted to them by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, and Ohio State University's Moritz College of Law. Hinchey directly requested the release of the report when EAC Chairwoman Donetta Davidson appeared earlier this month before the House Appropriations Subcommittee on Financial Services, of which the congressman is a member. Davidson told Hinchey at the hearing that she would provide the subcommittee with the report that is being released to the public today. Hinchey also requested the release of a separate report on voter fraud and intimidation. The Help America Vote Act (HAVA) requires the EAC to conduct and make available to the public studies regarding certain voting issues.

"I am very pleased that following Chairwoman Davidson's appearances before Congress the EAC decided to do the right thing and make public the Eagleton Institute of Politics study on voter identification issues. I hope that this decision signals a new day of transparency and sets a precedent for all future and previous studies and reports submitted to the EAC.

"When Chairwoman Davidson came before our subcommittee a few weeks ago, I also requested that the EAC make public another report about voter fraud and voter intimidation submitted to them by two outside consultants. It is my hope they will release this report to the public as well. The EAC has the responsibility to keep the public informed on any findings it has with regards to voter fraud, intimidation, and any other electoral issues.

"As we work to increase voter turnout and make our democracy function more effectively, it is imperative that potential voters are assured that they will be able to cast their votes fairly and in an environment free of intimidation. To achieve that goal, the EAC must be open with the information it receives in order to help identify voting problems and make recommendations on fixing them."

-----  
Sent from my BlackBerry Wireless Handheld

015273

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

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,  
klynndyson@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, [REDACTED]  
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  
Suite 1100

015274

Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

015275



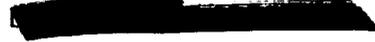
Elieen L. Kuala/EAC/GOV  
04/12/2007 02:18 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request

History: This message has been replied to and forwarded

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



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

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;  
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

015276

McClatchy Newspapers. An abbreviated version of the request follows:

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

015277



Elieen L. Kuala/EAC/GOV  
04/13/2007 02:00 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request

History

This message has been replied to

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

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

Donetta L. Davidson/EAC/GOV

Donetta L.

015278

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 [REDACTED]

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; [REDACTED]  
**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

015279



Elieen L. Kuala/EAC/GOV  
04/14/2007 09:58 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request

History

This message has been replied to

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  
Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
[REDACTED]

Donetta L. Davidson/EAC/GOV

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

To Elieen L. Kuala/EAC/GOV@EAC  
cc

015280

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  
[REDACTED]

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

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-----  
Sent from my BlackBerry Wireless Handheld  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 04/12/2007 08:38 AM EDT

015281

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;

Subject: FOIA Request

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

015282

Jeannie Layson/EAC/GOV  
04/16/2007 10:18 AM

To Donetta L. Davidson/EAC/GOV, ghillman@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

bcc

Subject Chair Requests Internal Review

Commissioners,

The chair has asked me to provide you with the memo she just submitted to Curtis Crider, requesting a review of our contracting procedures surrounding the voter identification and vote fraud and voter intimidation research projects. She has asked me to write a press release about this decision, which I will send to you shortly. She requests that we incorporate the commission's request into the letter to the advisory boards and to Congresswoman Lofgren. She also requests that we respond to Sen. Feinstein's letter, letting her know that we are working to comply with her request, but we wanted to alert her to the action we've taken.

I am going to circulate this to the staff so everyone will be aware of this action. Please let me know if you have any questions, and I will have a press release for your review shortly. Attached to the press release will be this memo, letters from Members of Congress regarding this issue, and the recent statements from Congressmen Hinchey and Serrano.



IG Review Req. 4-16-07.doc

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

015283



**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.

Jeannie Layson/EAC/GOV  
04/16/2007 11:33 AM

To Caroline C. Hunter/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.  
bcc  
Subject Re: IG Press Release 

It's in there... first sentence in the fourth paragraph: "Last month, the commission voted unanimously to launch a comprehensive study focused on voter identification laws **after concluding that initial research it received in a report was not sufficient to draw any conclusions.**"

Please let me know if that is sufficient.

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

Caroline C. Hunter/EAC/GOV  
04/16/2007 11:28 AM

To Jeannie Layson/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
Subject Re: IG Press Release 

Could we pls add a sentence about why we did not adopt the fraud report - ie- had conclusions that were not supported by the underlying research.

Caroline C. Hunter  
Commissioner  
Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
(202) 566-3107  
chunter@eac.gov  
www.eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
04/16/2007 11:13 AM

To Donetta L. Davidson/EAC/GOV, ghillman@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

015287