

BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of:

Reappointment of both Brian Newby as the U.S.) Election Assistance Commission's Executive) Director and Clifford Tatum as the U.S. Election) Assistance Commission's General Counsel) for a) term of four (4) years effective October 23, 2019.)

CERTIFICATION

I, Christy McCormick, Chairwoman of the Election Assistance Commission, do hereby certify that on September 5, 2019 the Commission decided by a vote of 2 - 2. The following action:

The Commission did not approve the reappointment of Brian Newby as the U.S. Election Assistance Commission's Executive Director and Clifford Tatum as the U.S. Election Assistance Commission's General Counsel for an additional term.

Commissioners McCormick and Palmer approved the recommendation; Commissioners Hicks and Hovland disapproved the recommendation.

Attest:

9/5/19____ Date

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Christy A. McCormick Chairwoman



TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: September 3, 2019, 2:00 pm

BALLOT DEADLINE: September 5, 2019, 2:00 pm

COMMISSIONERS: MCCORMICK, HOVLAND, HICKS, AND PALMER

- **SUBJECT:** Approve both the reappointment of Brian Newby as the U.S. Election Assistance Commission's Executive Director and Clifford Tatum as the U.S. Election Assistance Commission's General Counsel for a term of four (4) years effective October 23, 2019.
- (x) I approve the recommendation.
- () I disapprove the recommendation.
- () I object to the recommendation.
- () I am recused from voting.

COMMENTS: My vote is not in any way to be construed as a vote for one candidate or the other separately. It is my firm belief that this is the wrong time to remove this leadership team, given that the EAC is in the process of updating the VVSG (a process in which HAVA requires the recommendation of the Executive Director), on the cusp of the 2020 Presidential election, and may receive increased funding so that the agency can provide more support to election officials (under HAVA only the Executive Director may hire staff). This team also consists of the two individuals that received the highest (tied) scores from the Standards Board in our previous search for an Executive Director and General Counsel. The criticism by the Democrats of Executive Director Newby is baseless and unsupported by any evidence and is purely political and partisan. Executive Director Newby received a successful review by the Commissioners in the past, has not been the subject of any personnel complaint or claim, nor has his management of staff or the agency been the subject of any IG complaint. support the reappointment of Executive Director Newby because he has turned this agency around from near death and has led the staff to produce excellent work over the past almost four years. Excellent work product cannot be achieved

without excellent management and leadership, which he has provided. Attached to this ballot is a narrative on why he needs to continue to be the Executive Director of the Agency. However, if we were to vote separately on these individuals. I would not be able to support the reappointment of General Counsel Cliff Tatum. His job performance has been lacking over the past almost four vears. He has not provided requested timely written legal advice on matters. including the structure of VVSG 2.0, HAVA provisions, and NVRA litigation, has failed to keep commissioners aware of relevant introduced or pending legislation, as has been requested, has not conducted a review or provided suggested updates to Commission policy and procedures, which had been requested over 3 vears ago and renewed many times since, has been the subject of complaints by Congressional staff due to poorly cited and incomplete submissions, has provided incorrect advice during Congressional hearings leading to media criticism, has interfered in staff matters that are within the sole authority of the Executive Director and not in his job description, and refuses to submit himself to requirements for security clearance, which is a necessity in this critical election security environment. It is my hope that he will ameliorate these deficiencies if this team receives the votes to remain in place and I believe he will attempt to do SO.

DATE: <u>9/5/19</u>

SIGNATURE: Chuity A. M. Cormich

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairwoman. Please return the ballot no later than the date and time shown above.

For the first time in agency history, the EAC has the opportunity to have the same Executive Director in place for at least two presidential elections. This is a milestone that likely was envisioned when HAVA was created, and hasn't yet been achieved. It is extremely important in the security climate because the existing Executive Director was party to all discussions related to Russian interference in elections and was the primary intermediary between the FBI and DHS and Standards Board members during the 2016 election. There is no other EAC employee who has that institutional knowledge.

Key accomplishments in the Executive Director's first four years:

1. Managed a staff turnaround to elevated the profile of the agency to external stakeholders:

- Created energy and relevance amidst an active congressional focus to shut down the EAC.
- Five employees started the same day a <u>USA Today</u> front page story discussed a bill to close the agency. Two years later, leaders in the House and Senate, from both parties, are supporting not only the continuation of the EAC, but investments to restore its potential.
- Many of the activities occurred in 2018 while there was no quorum, demanding more from staff leadership.
- While the National Association of Secretaries of State (NASS) recommended the EAC close in 2015, three Secretaries, including two from states that opposed the EAC at the time, have sent letters endorsing the Executive Director for reappointment in 2019.
- Additionally, national organizations such the Bipartisan Policy Center, Democracy Fund, Campaign Legal Center, the Leadership Conference on Civil and Human Rights, and may others are advocating for the Commission to receive additional resources and public praising its efforts. In fact a recent letter to the House of Representatives Committee on House Administration signed by 28 voting rights, disability rights, racial justice, veterans, labor, and faith organizations noted that "an empowered and fully resourced EAC is critical to advancing the goals of the Help America Vote Act (HAVA), one of our nation's major federal voting laws, and to supporting state and local election administrators in the performance of their responsibilities."
- Those group urged Congress to support increased funding to the EAC in support of our vital efforts, a step House appropriators took when they recently announced their intent to increase the EAC's budget to \$16,171,000.

2. Elevated the talent level of staff within the agency

- The Commissioners in 2015 were concerned about the ability to attract talented employees at the EAC and directed the Executive Director to engage with OPM to align positions to needs. The OPM analysis was expanded to include recommendations that have been implemented to align salaries more properly to positions and enabled the EAC to raise the talent level and number of positions at the agency amidst budget cuts.
- Created a staff associate program that was highlighted for its ingenuity in the OPM report. Executive Director's 2017 performance review by Commissioners recognized the diversity of background and skills among new hires.
- Utilized the OPM process to consolidate functions and eliminate two positions, saving the agency \$300,000 and allowing for a seamless financial transition as two new Commissioners were added to the agency.
- On-boarded two new Commissioners amidst the government shutdown.
- Led the agency through two lapses in Continuing Resolutions---one over a month and one that required the total cancellation of two major advisory board meetings that were scheduled to start in Miami the next day.

3. Maximized value during times of reduced budget

- Operated in lean budget times, and created the first bottom-up budget in the agency in at least 8 years. This helped stopped the downward trajectory of the president's recommended budget, which saw a slight increase in 2018, and also included an additional \$2.4 million requested to move agency offices.
- Leveraged the appropriations discussions to push for a significant increase in 2020 budget. The House already has approved a 50 percent increase in the EAC's 2020 budget.

4. Raised the technical capabilities of the EAC

- Inherited an IT infrastructure that was past end of life, had down time and in fact crashed, as well as a system that stored certification activities, built by the previous deputy of certification, that had not been patched, wasn't reported as an EAC system, and was compromised
- Inherited a web services agreement that was already more than 2 years into its period, with no changes to the EAC website. Created a web content manager position and upgraded and modernized the website, including a mobile version. Raised the social media profile of the EAC.
- Hired a CIO to update all systems and move the EAC off the GSA backbone, while ensuring FISMA compliance and modernization of office technology

5. Critical infrastructure

- Only EAC employee who has been part of the critical infrastructure discussion with DHS and the White House from the very first meeting in August 2016.
- Following the 2016 Presidential Election, worked to ensure election officials had a prominent seat at the table as new lines of communication and information sharing were developed to address election security threats.
- Drove the development of an election security working group that eventually became the subsector's Government Coordinating Council (GCC). The GCC was set up within 10 months of the declaration of Elections as Critical Infrastructure, the fastest sector set-up ever, according to DHS.
- In addition to the EAC's work with the Department of Homeland Security to establish the GCC, the Commission played an integral role in establishing the Sector Coordinating Council (SCC) comprised of private election equipment manufacturers and vendors. These two councils are at the heart of the successful federally led effort to provide information and resources to help state and local election leaders be better prepared and more resilient.
- Drove the creation of a document that explained critical infrastructure to election administrators.
- Created an election security video that was met with applause at two local election official conferences, customized in at least five states, and part of a NASS best practices award in Iowa.
- Committed to Senate staff before passage of the \$380 million in HAVA Funds to have them distributed within 45 days and then, once passed, did so. Such speed was unprecedented by federal agency standards, and it's a feat that has gained high praise from a broad spectrum of stakeholders. This money is being used to secure our elections, purchase new election equipment, update voter registration systems, and shore-up election administration efforts from coast to coast.
- Actively pushed to obtain clearances for all Commissioners, Executive Director, Technical Staff, and the Inspector General.
- Actively represented the EAC at the Executive Committee meetings
- 6. Elevated the professionalism and value of the Election Administration and Voting Survey (EAVS) and provided enhanced research resources.
 - Modernized survey and data collection method.
 - Expanded relevance, including more insights from the data.
 - Developed on-line comparison tools.
 - Created Visualization, state-by-state, to personalize the data to EAVS audiences.Produced the following original resources and guidance related to election security:

- Starting Point: U.S. Election Systems as Critical Infrastructure (White Paper)
- o Election Security video and accompanying training materials
- Glossary IT Terms Managing Election Technology
- Glossary Common Cybersecurity Terminology
- o American Elections: Understanding Cybersecurity
- Incident Response Best Practices
- Risk-Limiting Audits Practical Application (White Paper)
- o 10 things you should know about maintaining your aging voting technology
- \circ 10 things you should know about purchasing new voting equipment
- o Checklist for Securing Voter Registration Data
- o Checklist for Securing Election Night Reporting Systems
- Quick Tips on Alternative Voting Methods
- Videos of DHS and ODNI election security presentations at EAC-hosted events
- Provided, upon request, specific election security bulletins to election officials from U.S. federal agencies focused on security and law enforcement, including the Federal Bureau of Investigation (FBI), DHS, and the Office of the Director of National Intelligence (ODNI)
- Posted online election security presentations from election offices in Colorado and Maryland
- Posted online all HAVA Funds state narratives containing details about how states plan to spend their newly appropriated HAVA Funds, including specifics about spending on security enhancements
- An October 2018 #Countdown18 Blog Series titled "Securing the Vote" featured how states are investing funds to improve election security, sharing best practices and "lessons learned"
- Established an "Election Security Preparedness" page on <u>www.eac.gov</u> to house election security information produced by the EAC and other federal partners, such asdDHS

7. Expanded Clearinghouse

- Developed the Election Administration Competency wheel to demonstrate the myriad of activities that election administrators face and to drive the future activities of the Clearinghouse.
- Began efforts with#BeReadyl6 initiative that created programs 45 days before inflection points incurred by election officials, to include election worker recruitment, military and overseas voting, postal issues, and list maintenance.
- Created more than 30 instructional and facilitative videos.
- Managed, led, and coordinated more than 25 public meetings and events, including events at the National Press Club, Senate Russell Building, and the Congressional Visitors Center.
- Created the Clearinghouse Awards, the CLEARies,
- Led events on Accessibility in Boston, Spokane, Baltimore, and Washington, taking the EAC's accessibility mission to organizations.
- Raised the professionalism of EAC's Annual Reports to Congress.
- Developed a cadre of staff experts to appear in EAC blogs, wrote commissioner blogs, presentations, and Congressional testimony, and overall raised the Communications competency at the agency dramatically.

• Worked closely at the point of contact for activities with federal partners, including the USPS, FVAP, and OSCE; worked as the point for all security indicators provided by the FBI and DHS to be sent to election administrators during the 2016 presidential election.

Events Included:

- Hosted ODNI and DHS for an election security discussion at the EAC Board of Advisors meeting in Salt Lake City, UT on April 24, 2019
- October 2018 Election Readiness Summit, featuring security and intelligence speakers (event was live streamed and video recording was posted online following the event)
- EAC Public Forum: An Election Security Conversation with U.S. Election Officials, a public forum meeting in Miami on April 18, 2018
- Hosted ODNI and DHS for an election security discussion at the EAC Standards Board meeting in Memphis, TN on April 11, 2018
- January 2018 Election Summit ahead of the 2018 Midterm Election, featuring a panel on election security and a keynote address from DHS (event was live streamed and video recording was posted online following the event)
- October 2017 Cybersecurity Roundtable (event was live streamed and video recording was posted online following the event)
- Participation in the 2018 Election Security roundtable
- Presented at events hosted by NASED, National Association of Counties (NACo), National Association of Secretaries of State (NASS), iGo, The Carter Center, and other leading election-focused organizations
- Three separate formation meetings, in Albany, NY, Washington, D.C., and Atlanta, GA to form the DHS Government Coordinating Council.
- Leadership and co-host of the DHS Sector Coordinating Council in the elections subsector.

Federal Testimony and Commentary included:

- Chairwoman Christy McCormick testimony before the House Committee on Oversight and Reform's Subcommittee on National Security, "Securing U.S. Election Infrastructure and Protecting Political Discourse," May 22, 2019
- "Securing the Accuracy and Efficiency of Elections" Chairwoman Christy McCormick, *The Washington Times*, March 3, 2019
- Commissioner Hicks testified before the House Committee on Homeland Security, "Defending Our Democracy: Building Partnerships to Protect America's Elections," February 13, 2019
- Commissioners Christy McCormick and Thomas Hicks testify before the Senate Rules and Administration Committee, "Election Security Preparedness: Federal and Vendor Perspective," July 11, 2018

- "Maintaining vigilance against election hackers" Commissioner Matthew Masterson opinion article, *The Washington Times*, July 26, 2017
- "EAC Commissioner underscores importance of congressional support for election assistance" Commissioner Thomas Hicks, *The Hill*, January 26, 2017
- Commissioner Thomas Hicks testimony before the House Committee on Oversight and Reform, September 28, 2016

8. Supported NVRA state-specific instruction changes in more than 20 states

- Implemented a regular process for addressing state-specific instruction changes.
- Expanded the language support in the federal form.
- Turned around all requests within 30 days of receipt, compared to a timeline of months and even years before 2016.
- 9. Reengineered technical support to improve the certification process and to expand expertise into other areas of election technology and security.
 - Recast Testing and Certification Division staff to be the most experienced, in terms of certification experience, in agency history
 - Inherited a stalled process for VVSG 2.0, that languished for years under a previous DFO and had no legal guidance or direction, and pushed it to public comments, development of requirements, and expected Commission vote by mid 2020..
 - Oversaw the certification of more than 20 voting system campaigns and modifications, the most in any four-year period at the agency.
 - Oversaw the delivery of more than 15 Elections Official as IT Manager trainings, including the development of an online module in FTE
 - .Conducted vendor meeting with commissioners and technical staff in 2019, the first such meeting since the agency reconstituted with commissioners in 2015.
 - Served as an industry leader with post-election audits, including development of a white paper on Risk Limiting Audits.

Trainings included:

- Developed and conducted tabletop exercises for hundreds ofdocal election officials in three states and regions, and participated in the "National Tabletop the Vote" at DHS;
- Conducted more than a dozen Election Officials as IT Manager trainings to hundreds of election officials in nine states;
- Provided two regional Election and Cyber Security Awareness Trainings to state legislators and a similar presentation to election official organizations, such as National Association of State Election Directors (NASED), Election Center and International Association for Government Officials; and
- Provided post-election audit training across five states.



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BALLOT DEADLINE: September 5, 2019, 2:00 pm

COMMISSIONERS: MCCORMICK, HOVLAND, HICKS, AND PALMER

- **SUBJECT:** Approve both the reappointment of Brian Newby as the U.S. Election Assistance Commission's Executive Director and Clifford Tatum as the U.S. Election Assistance Commission's General Counsel for a term of four (4) years effective October 23, 2019.
- () I approve the recommendation.
- (X) I disapprove the recommendation.
- () I object to the recommendation.
- () I am recused from voting.

COMMENTS: I cannot support an additional four years for the combined package of the current Executive Director and General Counsel. I do not believe, however, we should be limited to voting on these candidates together. I believe we should vote on each position individually, based on the merits of their performance, in order to ascertain if either the Executive Director or General Counsel has sufficient support for retention. Doing so ensures we explore every option possible to retain institutional knowledge and continuity amongst our staff leadership.

DATE: 09/04/19

SIGNATURE:

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairwoman. Please return the ballot no later than the date and time shown above.



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- () I disapprove the recommendation.
- () I object to the recommendation.
- () I am recused from voting.

COMMENTS:

See Attached Explanation of Vote

DATE _____09.05.19 _____SIGNATURE: _____Donald Palmer

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairwoman. Please return the ballot no later than the date and time shown above.

I approve of the recommendation for the reappointment of Brian Newby as Executive Director and Cliff Tatum as General Counsel. While individually, I would not vote to reappoint Mr. Tatum as General Counsel for another four years for the reasons articulated below, together as a team, I would vote to reappoint to a new term of appointment. Each individual was tied for the top ranking and recommendation for EAC leadership made by the Standards Board, a statutory advisory board to the Election Assistance Commission.

I would respectfully vote to approve the re-appointment of Brian Newby as Executive Director for the following reasons:

The retention of Brian Newby will provide a continuity of leadership at the agency and election community as we enter the critically important 2020 election cycle, finalize the VVSG 2.0 standards and requirements modernization process, and not unnecessarily interrupt the current trajectory of success at the agency. If the recommendation is approved, the EAC has the opportunity to have the same Executive Director in place for at least two presidential elections, a first in its history. Such continuity is vital in the current security climate because the existing Executive Director was party to all discussions related to Russian influence interference in elections and he remained the primary intermediary between the FBI and DHS and Standards Board members during the 2016 election. There is no other EAC employee who has that institutional knowledge moving into 2020.

1. Newby managed a staff turnaround to elevated the profile of the agency to external stakeholders:

Executive Director Newby has created energy and relevance at the agency amid an active congressional focus to defund and shut down the EAC. For example, five employees started the same day a <u>USA Today</u> front-page story discussed a bill to close the agency. However, two years later, leaders in the House and Senate, from both parties, are supporting not only the continuation of the EAC, but support key investments to restore its potential under HAVA. While the National Association of Secretaries of State (NASS) recommended the EAC close in 2015, three Secretaries, including two from states that opposed the EAC at the time, have sent letters endorsing the Executive Director for reappointment in 2019.

This external support has been echoed by a growing number of Congressional leaders, including Senate Rule and Administration Chairman Blunt, who remarked in February 2019, after the EAC had a quorum for the first time in nearly a year, that the EAC "has now found a new mission and it's an important one" and that he looks forward to "working with the commission as they do everything they can to help give state and local election officials the kind of help they need from the federal government to do their job." The agency has never been more relevant and Brian Newby has been at the helm.

2. Newby maximized the value of the agency despite times of reduced budgeting and personnel

Executive Director Newby successfully operated the agency in lean budget time and brought us to the current position we find ourselves. He created the first bottom-up budget in the agency in at least 8 years. This step helped stopped the downward trajectory of the president's

recommended budget, which saw a slight increase in 2018, and also included an additional \$2.4 million requested to move agency offices.

3. Newby modernized and raised the technical capabilities of the EAC

Executive Director Newby inherited an aging IT infrastructure at the agency that was past its end of life, and had repeatedly crashed, and an EAC certification system had been compromised. Newby created a web content manager position and upgraded and modernized the website, including a mobile version. He also hired a CIO to update all systems and move the EAC off the GSA backbone, while ensuring FISMA compliance and modernization of office technology.

4. Newby successfully managed the Critical Infrastructure Designation for the EAC

Executive Director Newby has been the only EAC employee who has been part of the critical infrastructure discussion with DHS and the White House from the very first meeting in August 2016. Following the 2016 Presidential Election, he worked to ensure election officials had a prominent seat at the table as new lines of communication and information sharing were developed to address election security threats. Newby has been a part of continued discussions with the National Security Council at the White House moving into the 2020 General Election. He personally drove the development of an election security working group that eventually became the subsector's Government Coordinating Council (GCC). The GCC was set up within 10 months of the declaration of Elections as Critical Infrastructure, the fastest sector set-up ever, according to DHS.

Finally, in the run up to potential new funding to states, Executive Director Newby personally committed to Senate staff before passage of the \$380 million in HAVA Funds to have them distributed to the states within 45 days and then, once passed, he successfully did so. Such speed was unprecedented by federal agency standards, and it's a feat that has gained high praise from a broad spectrum of stakeholders.

5. Newby enhanced and improved the Clearinghouse and Testing & Certification Program

Executive Director Newby developed the Election Administration Competency wheel to demonstrate the myriad of activities that election administrators face and to drive the future activities of the Clearinghouse. He raised the professionalism of EAC's Annual Reports to Congress, generating additional support for the agency from members and staff. During his tenure, Newby managed, led, and coordinated more than 25 public meetings and events, including events at the National Press Club, Senate Russell Building, and the Congressional Visitors Center. He created the Clearinghouse Awards, the CLEARIES, and in the process of beginning the fourth year of the awards. He also led a number of events on accessibility in Boston, Spokane, Baltimore, and Washington, taking the EAC's accessibility mission to organizations.

At a critical time, Newby successfully recast the Testing and Certification Division staff to be the most experienced, in terms of certification experience, in agency history. During his tenure, he oversaw the certification of more than 20 voting system campaigns and modifications, the most in any four-year period at the agency. Newby also initiated a vendor meeting with commissioners and technical staff in 2019, the first such meeting since the agency reconstituted with commissioners in 2015. Newby also inherited a stalled process for VVSG 2.0 that had languished for years under a previous DFO and had no legal guidance or direction, and pushed it to public comments, development of requirements, and an expected Commission vote by mid-2020.

Regarding the appointment of Cliff Tatum to General Counsel

While I support the recommendation of reappointment of current leadership to an additional term, I would not be able to support the individual reappointment of Cliff Tatum as General Counsel to a term of four years for the following reasons.

Mr. Tatum has provided me valued guidance and counsel during the nomination process to be a Commissioner. I also deeply value his experience as an election administrator, as the general counsel of the EAC over the past four years, and the recommendation made by state and local election officials in 2015. However, there are a number of areas in which the agency has not optimally performed due to his lack of performance in the position. With the pending VVSG 2.0 approval process, there has been inexplicable delay to provide written legal opinions to Commissioners and staff, including the Executive Director. There have also been unfortunate delays in the timely legal review on potential testing and certification policies. There have been a number of requests to do a full legal review of all EAC policies for update as a result of the newly established quorum. That review has not taken place.

Generally, there has been a pattern of delayed or non-response to requests for formal or informal legal opinions made by Commissioners or the Executive Director. In my experience, these opinions are vital to ensure the members of the Commission and staff feels assured they are following applicable legal requirements when taking action. In my observations thus far, I regret that the General Counsel has not worked more closely with and been more responsive to the Executive Director and all Commissioners.

Finally, I am concerned that the General Counsel does not currently have a security clearance and has not agreed to enter into a process to promptly receive one. In this new security environment, the leadership at the EAC needs to have a security clearance and access to fully engage with our federal and state partners. As the General Counsel is just one step away from Executive Director in the statutory succession plan under HAVA, that person needs to be able to fully participate in classified briefings or discussions with the Intelligence Community or Executive Branch agencies.



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- () I approve the recommendation.
- (X) I disapprove the recommendation.
- () I object to the recommendation.
- () I am recused from voting.

COMMENTS: Loo not believe the vote should combine both the positions of Executive Director and General Counsel. In 2015 when interviewing candidates for the positions, the Commission interviewed and considered candidates on their individual merits before separately offering the position. Although, the 2015 vote included both positions, doing so was clearly done for ease to the commission to fill both positions. If one person decided to decline, the position offered did not tie the other position on accepting. The vote on retention for an additional 4-year term should be done separately; this vote may set bad precedent. Section 204 of the Help America Vote Act clearly demonstrates that each position retention is separate. I cannot support this recommendation. I would vote to retain the General Counsel for an additional 4-year term. DATE: 9/5/2019 SIGNATURE:

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairwoman. Please return the ballot no later than the date and time shown above.