

## **Testimony of Ted Trimpa**

### **On behalf of the State of Iowa, Office of the Secretary of State Before the Election Assistance Commission Regarding the Iowa Audit Findings Appeal**

**April 30, 2008**

Madame Chair and members of the Commission, Director Wilkey, and Elections Assistance Commission staff, good morning and thank you for the opportunity to speak to you today on behalf of the State of Iowa and Iowa Secretary of State's Office. My name is Ted Trimpa, and I am a shareholder with Brownstein Hyatt Farber Schreck, LLP. I am speaking in support of an appeal by the Iowa Secretary of State's Office with respect to Finding 1 of Audit Resolution Report, Iowa Single Audit – Assignment No. E-SA-IA-18-07 issued May 4, 2007 (the "Audit Resolution Report") received by the State of Iowa on October 2, 2007. With me today is Joni Klaassen, Governor Culver's Deputy Chief of Staff and formerly with the Secretary of State's office, and Charles Krogmeier, Director of the Iowa Department of Management and former First Deputy Secretary of State. We are here today to answer any questions you may have as part of your fact gathering for this appeal.

The Audit Resolution Report's Finding 1 pertains to "Unallowable Use of HAVA Requirement Payments" and originated from the Iowa Office of the Auditor's (the "State Auditor") issuance of a Single Audit Act audit to the State of Iowa for the year ending June 30, 2006 (the "Single Audit Report"). Specifically, the Single Audit Report classified costs totaling \$61,238, related to a celebration of voting heritage and voting rights, as questionable costs because, according to the State Auditor, they did not meet the requirements of education.

On November 1, 2007, the Iowa Secretary of State's Office filed its appeal to Finding 1 of the management decision (the "Appeal"), which required the State of Iowa to pay to the U.S. Treasury \$61,238 for alleged unallowable entertainment costs funded with HAVA Section 251 funds in state fiscal year 2006. The State of Iowa did not appeal the other findings of the Audit Resolution Report and has proactively taken steps to comply with those findings.

While my testimony today will provide this Commission with additional facts and analysis regarding the questioned expenditures, we ask that the Commission, in accordance with your rules, take up to an additional 60 days for further independent fact gathering before reaching a final decision. At the conclusion of this 60 day fact gathering period, the State of Iowa will be asking this Commission to either (a) reverse the Finding 1 management decision because of the lack of completeness, or (b) reverse the Finding 1 management decision because the expenditures were permissible and the only error was the failure to follow appropriate procedures.

The State Auditor's Single Audit Report and the management decision within the Audit Resolution Report (the "Reports") each provide only a broad, general description of the use of the funds. The Reports lack the necessary detail to determine conclusively whether such funds were spent in compliance with HAVA and the Office of Management and Budget's Circular A-87. In this case, an understanding and analysis of the broader context within which the questioned expenditures occurred and how they were categorized is essential to determining whether such expenditures were educational uses or similar allowable uses under HAVA and Federal cost principles.

As the Appeal provided, under the banner of "Celebrate Voting," a project was undertaken by the Iowa Secretary of State's Office, the Iowa Civil Rights Commission, the Iowa Department of Human Rights, the Iowa League of Women Voters, the Iowa-Nebraska Chapter of the NAACP, the Carrie Champan Catt Center at Iowa State University, the Iowa Historical Foundation and ID Action (the advocacy arm of the Governor's Development Disabilities Council). These eight groups cooperated to sponsor a series of educational forums and other voter education events beginning in August 2005 and ending in January 2006. The Iowa Secretary of State's Office provided a general summary of these events as part of the Appeal.

The Reports group the questioned expenditures in various general categories, including speakers, performers, supplies, children's activities, and travel. While these categories are likely accurate, the general nature of the descriptions fails to explain completely the individual expenditures within each category. A more suitable application of expenditures would be for the Audit Resolution Report to allow these expenses under OMB Circular A-87's Meetings and Conferences category. This category considers allowable expenses to include costs of meetings and conferences organized for the dissemination of voter information. Further, allowable expenses include the costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. In contrast, the Audit Resolution Report relies on the OMB Circular A-87's Entertainment category. This category does not appear to be relevant to the Celebrate Voting events as this OMB category is specific to costs of entertainment, which the OMB expressly describes as "tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities." In order to illustrate the misapplication, please consider the following events that were part of Celebrate Voting.

First, the Single Audit Report specifically lists expenses related to "an internationally renowned opera star" performance at an event on August 5, 2005 as example of unallowable expense. While Iowa native Simon Estes may be a world-renowned opera performer, his role at the August 5 event was limited to two songs as part of a more than two hour program that recognized several Iowans who received National Association of Secretaries of State medallions for their personal role in expansion of voting rights in America and in Iowa. More importantly, Mr. Estes' attendance at the event was ancillary to his primary purpose the following day, which was to actively participate in a series of workshops with performing artists of various ages who discussed how arts can be used to foster voting rights and as voter education opportunities. Specifically, Mr. Estes' central message focused how the arts can be an effective tool for political and social change and therefore, expand voting rights and voter participation. His message was reinforced by examples of his personal struggles as one of the few African-American opera performers in the 1960s. Apparently, rather than exploring the broader context of his involvement at the events, the Reports summarily and incorrectly placed his expenses within the category of entertainment based simply on his profession.

Second, the Iowa Secretary of State's Office paid a fee to Virginia Tech professor Nikki Giovanni for her role in leading the voting participation workshops on August 6, 2005. Her purposes that day cannot be fairly categorized as entertainment as she brought together the hundreds of participants that day in a closing session to disseminate information intended to increase the likelihood that the participants will successfully continue their efforts at increasing voter participation. In addition, she focused the participants on the importance of voting as an essential American right and privilege and offered her technical assessment on the state of voter education in the United States. Similar to the expenditures for Mr. Estes, the Reports fail to properly categorize this expenditure in the context of the actual events on August 6. The expenses related to Mr. Estes and Professor Giovanni were likely permissible under OMB Circular A-87's Meetings and Conferences category. As I previously noted, the category

expressly allows for their fees and expenses. Their involvement was essential to the success to the conference and workshops that were designed to disseminate information on voter participation and voter education. As such, the Reports lack enough data to fully understand the nature of the activities and incorrectly categorize the questioned expenses.

Based on the facts provided to date, the Audit Resolution Report lacks the completeness required to make a final determination. The State of Iowa is confident the expenditures were permissible under HAVA (e.g., Section 101(b)(1)(c) – educating voters concerning voting procedures, voting rights and voting technology and Section 251 – improving administration of federal elections) and Federal cost principles (i.e., Meetings and Conferences) and looks forward to providing additional information to the Commission.

Thank you for your time and consideration of this Appeal.