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April 14, 2008

Rosemary Rodriguez, Chair  
US Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005

Dear Chairwoman Rodriguez:

Thank you for the opportunity to comment on proposed policy changes under consideration by the US Election Assistance Commission (EAC) regarding the Help America Vote Act's (HAVA) maintenance of effort (MOE) provisions and to create a process for considering requests for opinions on the use of HAVA funds.

As I mentioned in testimony offered to the EAC at its March 20, 2008, hearing, California's Secretary of State appreciates the challenges faced by this relatively new federal agency. Creating policy for the entire nation within a framework that requires interpretation and guidance, and yet provides explicit discretion to the states on determining how to comply with HAVA for crafting State Plans (Section 253 (c)) and implementation of HAVA's Title III requirements (Section 305) is a difficult task.

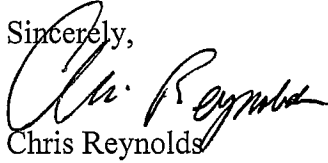
California's Secretary of State agrees with the proposal to clarify that the MOE provisions of Section 254(a)(7) do not obligate a state to include in its MOE calculations expenditures by local units of government. Although the State of California followed the September 6, 2007, advisory in preparing its most recent annual report to the EAC on Section 251 expenditures, this is not a tacit agreement with the current EAC interpretation. Further, to the extent that a state included in its State Plan the creation of an MOE for local units of government, it should be recognized that those states were exercising the discretionary authority provided in Section 253(c), an individual decision that does not bind other states to do the same. In its January 30, 2007, letter to the EAC, California detailed some of its concerns about including local governments in the MOE calculation, including the central question of whether HAVA requires this cost data to be included in the MOE. Those concerns are still relevant. The California Secretary of State supports the EAC proposal under consideration and looks forward to guidance based on the proposal under consideration should it be adopted.

As to the proposal to require the EAC Commissioners to consider requests and render advisory opinions on the use of HAVA funds, the California Secretary of State recognizes that implementation of HAVA has been an evolutionary process in many respects. It seems appropriate, therefore, that administration of HAVA has, and should be, an iterative and organic process. The most important thing for California's voters and, presumably, the voters in the 49 other states is that the process yield clear, definitive, and

consistent guidance that recognizes the important role of the EAC in assisting and guiding the states, while acknowledging the discretion provided to states to meet the unique needs and challenges they face. The California Secretary of State defers to the EAC to determine how best to ensure that the Commission's FAQs, staff advice and guidance, and actual decisions work in tandem to avoid any confusion or misunderstanding on the administration of policy, process and procedures.

Thank you again for taking up these important policy matters. Please do not hesitate to contact me at (916) 651-7837 should you have any further questions.

Sincerely,



Chris Reynolds

Deputy Secretary of State, HAVA Activities

cc: Caroline Hunter, Vice Chair  
Donetta Davidson, Commissioner  
Garcia Hillman, Commissioner