



MICHIGAN
DEPARTMENT
OF STATE
LANSING, MICHIGAN 48918

November 24, 2008

Ms. Rosemary Rodriguez, Chairperson
U.S. Election Assistance Commission
1225 New York Avenue - Suite # 1100
Washington, D.C. 20005

Dear Chair Rodriguez:

I am writing to comment on the letter by Ms. Ruth Johnson, Oakland County Clerk, dated October 24, 2008, and to urge the U.S. Election Assistance Commission (EAC) to follow its own policy for posting material. I also strongly encourage the EAC to perform due diligence to verify the accuracy of correspondence with state election officials. It merits emphasis that posting claims that are inaccurate or unsubstantiated on the eve of a major general election is not only irresponsible but also serves as a detriment to election officials working hard to administer the election.

The situation relayed in Ms. Johnson's letter was immediately resolved by the vendor. The Logic and Accuracy Testing (L & A Testing) is designed to reveal any issues with the coding or the related performance of the tabulator. In this case, four jurisdictions had at least one tabulator provide inaccurate results. In no case, did all the tabulators in any one of the jurisdictions display this problem.

ES&S serviced the tabulators and found the DAC setting on the read heads required adjustment. All test decks were re-run without error. This was a successful operation in that L & A testing and the vendor service remedied an identifiable problem. The "dust and debris build-up on the sensors" was not reported as the cause of the inconsistent results.

I am somewhat surprised that the EAC would post such a letter after requesting Ms. Sue McRill of our Bureau of Elections to testify before the EAC this past September on the importance of L & A Testing and on the thorough testing performed routinely by Michigan election officials. Ms. McRill testified in great detail how the testing identifies errors in need of correction **before** an election.

Further, the posting of Ms. Johnson's letter does not appear to follow the EAC "Policy on Posting Studies and Reports Under Section 202(1) of The Help America Vote Act." First, there is no indication that Ms. Johnson submitted her letter to the EAC for public posting under this policy.

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Second, the letter in no way can be considered a "report or study." Third, Ms. Johnson did not "certify the report or study reflects 'experience' of the state or local government referred to in Section 202(1) of the Help America Vote Act." Finally, did each Commissioner receive a copy of the letter with the understanding that it would be posted under this policy and that she could object to the posting?

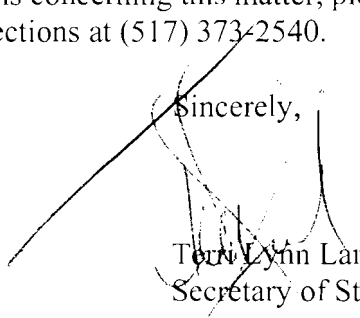
It is incumbent on the EAC to understand the roles and responsibilities of election officials in each state. In Michigan, city and township clerks own, maintain, operate and have legal responsibility for voting equipment. Ms. Johnson's letter would not qualify to be posted as she has no responsibility for "implementing the guidelines or in operating voting systems in general." (Section 202(1) HAVA).

The public posting of such a letter on the eve of a presidential election is most unfortunate given the factual basis for the concern expressed did not exist. I urge you to be more deliberative in the future by adhering to EAC policy and involving state election officials before posting anything that could unnecessarily undermine voter confidence in a voting system.

Finally, I ask that you either post this letter with Ms. Johnson's letter or remove Ms. Johnson's letter from your website.

If you have any questions concerning this matter, please feel free to contact Christopher M. Thomas, Director of Elections at (517) 373-2540.

Sincerely,



Terry Lynn Land
Secretary of State

c: Members of NASS
Michigan's Local Election Officials
Christopher M. Thomas