



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

May 18, 2007

Chairman Dianne Feinstein
Senate Rules and Administration Committee
331 Hart Senate Office Building
Washington, DC 20510

Via HAND DELIVERY

Senator Richard Durbin, Chairman
Senate Appropriations Committee,
Subcommittee on Financial Services
And General Government
309 Hart Senate Office Building
Washington, DC 20510

RE: Request for documents and responses concerning
Voting Fraud and Voter Intimidation Study and
Voter Identification Study

Dear Senators Feinstein and Durbin:

Thank you for the opportunity to provide information regarding the research and study efforts of the U.S. Election Assistance Commission (EAC). In your letter of April 12, 2007, you requested information and documents related to two studies conducted by EAC: the Voting Fraud and Voter Intimidation Study and the Voter Identification Study. Over the past several weeks, our staff have been compiling, reviewing and reproducing documents responsive to your request. By this letter we are transmitting the documents that you have requested and responding to the questions that you have posed. The documents are being delivered to the Senate Rules Committee majority office.

Before I address the specific questions, it will be helpful to provide some background information about these two studies, the people that worked on them, and the products that were gained from the studies.

BACKGROUND

Voter Identification Study

In April 2005, EAC let a contract to the Eagleton Institute of the Rutgers University (“Eagleton”) to conduct a study on provisional voting and voter identification. The contract was competitively bid and Eagleton was awarded the contract. This marked the first contract let by EAC for the research and study efforts. It was intended to produce guidance under Section 304 of HAVA for provisional voting and “best practices” for voter identification.

The statement of work for this contract required Eagleton to:

- Collect and analyze state legislation, administrative procedures and court cases to understand the disparities and similarities between the state approaches and using that information to provide a baseline for future approaches;
- Conduct an EAC public hearing on the topic of voter identification requirements;
- Recommend alternative approaches for future implementation of HAVA voter identification requirements; and
- Prepare preliminary draft guidance document.

The technical proposal submitted by Eagleton proposed to perform these tasks using a group of researchers from Rutgers University as well as a group of law professors from Moritz College of Law. Eagleton also proposed using a working group to comment on the draft analysis and to assist with developing alternative approaches as called for in the statement of work. Eagleton proposed conducting a statistical analysis of voter turnout in jurisdictions with and without voter identification requirements; providing a database of major articles on Voter ID requirements; summarizing case law on voter identification; and creating a compendium of state legislation, procedures and litigation.

Eagleton briefed the Commission on its work at EAC’s July 28, 2005 public meeting held in Pasadena, California. Eagleton also briefed the EAC Standards Board and Board of Advisors at their May 2006 public meetings. Eagleton delivered its draft report in May 2006. EAC ultimately decided not to adopt the Eagleton draft report on voter identification, but to release the document and its appendixes.

Voting Fraud and Voter Intimidation

As a part of its research obligations under Section 241 of HAVA, EAC determined in 2005 to conduct an initial review of voting fraud and voter intimidation. EAC knew that this topic was extremely difficult to research, because of the difficulty in obtaining published information on cases related to these types of offenses. As such, EAC hired two experts to assist it with identifying and summarizing existing research on this topic, developing a common definition of the terms voting fraud and voter intimidation, and recommending methods by which EAC could conduct a comprehensive study of these topics in the future.

The two experts that were hired served as contract employees of EAC under the authority of title 5, section 3109 of the United States Code. They signed contracts acknowledging their status and their responsibilities. They were supervised by an EAC employee who was in charge of this project. They received support from a variety of EAC personnel. Their contract also called for the review of their research by a working group.

In July 2006, the experts provided a draft report of their research. The review of that draft report was delayed by the illness of the EAC staff person in charge of this project and ultimately resulted in another staff person assisting with the review and revision of the draft report. EAC adopted its final report at its public meeting on December 7, 2006.

General Research Methodology and Protocol

As you know, the EAC is a small agency. The Commission has but one fulltime employee dedicated to the management of its research. Because of its limited resources, the EAC must seek outside organizations and individuals to provide temporary assistance with regard to its various projects. This is particularly true in the research arena. However, to date, the EAC has not let a contract requesting a third party to issue an independent report on a given subject. Instead, the EAC sought assistance in the creation of a Federal report, bearing the EAC seal. Ultimately, the research that is conducted and the product that is produced must provide objective clarity to the issue and improve the administration of elections for Federal office. This policy is clear in each of EAC's contracts. EAC contractors or contract employees are tasked to provide a draft product under staff oversight. This draft product is always subject to review, editing and acceptance by EAC.

SPECIFIC QUESTIONS

You asked specific questions about Voter Identification and Voting Fraud and Voter Intimidation Studies. The following responses address each of those questions in turn.

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?

(Our response is made under the assumption that this question refers to the voter identification study.) According to Project Manager Karen Lynn-Dyson, she did not receive any outside pressure to change or not release the entire draft report or portions of the draft language of the Eagleton study of Best Practices to Improve Provisional Voting and Voter Identification Requirements. Former Commissioners Ray Martinez and Paul

DeGregorio received input from members of the Board of Advisors, who expressed concerns about the ability of the contractors to present unbiased results.

Communications responsive to this question are in the attached documents.

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?

The request for proposal, statement of work, and contract as well as all contract modifications are attached.

3. Can you provide the names and qualifications of Election Assistance Commission staff that worked on the Eagleton Institute project?

Project manager Karen Lynn-Dyson assumed oversight of the Eagleton voter identification and provisional voting contract in June 2005. Ms. Lynn-Dyson, who has 25 years of experience and 18 years of experience managing projects, joined the EAC full time in January 2005 as research manager. Prior to joining EAC, she worked at a management consulting firm overseeing several government contracts. From 1993 to 2001, she was the project director for the Aspen Institute's Domestic Strategy Group, a bipartisan group founded by David Gergen, William Bennett, and former U.S. Senator Bill Bradley. Ms. Lynn-Dyson began her career as a grant maker at United Way and the Council on Foundations. She has a bachelor's degree from Vassar College and a master's degree in social policy from the University of Chicago.

Carol Paquette, Interim Executive Director. Ms. Paquette has 40 years of management and analysis experience. She has organizational management experience in both the government and private sectors, including prior service as the Director of Administration for the National Security Council. She served as a government contracting officer for six years, during which time she was responsible for preparing requirements statements, developing and executing acquisition strategies for policy analysis studies, information systems, facility renovation work, and training.

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.

The project manager, Karen Lynn Dyson, had countless communications with the project team via email, telephone and in person. During these conversations and communications, she discussed the status and progress of their work. According to a review of our records by the project manager, in addition to these informal communications, there were five in-person meetings (one or more Commissioners were present at all five); ten teleconferences (one or more Commissioners participated in two

of the ten); two presentations to the EAC advisory boards – EAC Standards Board and EAC Board of Advisors; and two public meetings. A chart detailing the activities and meetings during the contract period is attached to this letter.

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.

As a part of the Eagleton contract and work plan, they proposed and used a peer review group consisting of the following members:

- R. Michael Alvarez, Professor, California Institute of Technology;
- John C. Harrison, Professor, University of Virginia School of Law;
- Martha E. Kropf, Assistant Professor, University of Missouri-Kansas City
- Daniel H. Lowenstein, Professor, University of California at Los Angeles School of Law;
- Timothy O'Rourke, Dean, Salisbury University;
- Bradley Smith, Professor, Capital University Law School;
- Tim Storey, Principal, National Conference of State Legislatures Program; and
- Peter G. Verniero, Former New Jersey Attorney General.

The Eagleton Peer Review Group met on three separate occasions via conference call. During those calls, the Peer Review Group provided Eagleton with feedback on both of their research products on provisional voting and voter identification.

After receiving Eagleton's first draft on its voter identification work, EAC was concerned about the data and analysis and empanelled a separate working group. This group consisted of New York University Professor Jonathan Nagler, MIT Associate Professor Adam Berinsky, and University of Arizona Associate Professor Jan Leighley. These working group members were provided the draft report as well as the data on which the report was based. On May 11, 2006, EAC Research Director Karen Lynn-Dyson conducted a one-hour conference call with the EAC working group and project staff from the Eagleton Institute of Politics, including Tim Vercelloti and Tom O'Neill. In addition, several members of the Eagleton Peer Review Group also participated in the conference call.

Participants engaged in a high-level, technical discussion of the statistical techniques that were employed to analyze the data. The working group members expressed concern about the multi-category, ordinal variable that was used. This variable is represented by the 5-levels of voter identification requirements: state your name, sign your name, non-photo identification, photo identification and affidavit. The working group members

were concerned that one or more of the categories of this single variable was based on unrealistic assumptions. The working group members suggested dividing this single, ordinal variable into individual dummy variables to represent each of the levels of voter identification.

There were no minutes taken of this discussion. However, Eagleton agreed to re-analyze its data using the new method suggested by the working group members.

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?

As stated above, Eagleton agreed to re-analyze their data using the new method suggested by the working group members. When the data was analyzed under this approach, the results were different than those originally obtained with the multi-category, ordinal variable. Where Eagleton originally found that the manipulation using the multi-category, ordinal variable produced statistically significant results, the use of the dummy variable approach did not result in the same relationship amongst the variables.

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?

Throughout the project, questions concerning the data and analysis were raised by staff Commissioners, and academics, alike. Eagleton briefed staff and Commissioners concerning their research. During those briefings, Commissioners and staff asked probing questions about the use of citizen voting age population as the basis of the turnout figures. Commissioners questioned the turnout figures that were used for specific states. Similarly, when the draft product was delivered the project manager had concerns about the analysis and suggested empanelling the working group. The working groups' concerns were discussed in response to question 5.

All of these factors played a role in the ultimate decision by the Commission not to adopt the research and report provided by Eagleton. Despite the fact that the Commission did not adopt the data and report, they agreed to release them to the public, so that the public could review them and draw their own conclusions.

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?

Concerns, as described above, were being addressed through the working group review.

EAC felt that it should not present a project that was still subject to technical review to the Standards Board and Board of Advisors. The project simply was not ready for discussion until some of the expressed concerns were addressed.

In October 2006, the Commission adopted a set of provisional voting best practices, which is attached.

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?

It was initially contemplated that one year of study would provide a sufficient baseline of data about the various voter identification laws in place throughout the country. However, since that time many states have passed or changed their voter ID laws. Both Eagleton and EAC agreed that data from one election cycle was not sufficient. In order to make conclusions based upon turnout figures, additional data is needed to compare turnout in two Presidential election cycles to build on the work done by Eagleton.

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?

The cost was \$557,092. This cost included the provisional voting and voter identification research conducted by Eagleton.

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?

A working group that was a part of this study performed its duties by providing input regarding summaries prepared by the experts of individual interviews, reports and articles reviewed, court cases, and news articles, as well as the base data for these summaries. Some members expressed concern about the ability of one of the consultants to approach these topics objectively, based upon the consultant's affiliations and published articles on the topics. In addition, EAC received communications from two of the persons who were interviewed – Craig Donsanto and John Tanner -- concerning the fact that they did not believe that their interviews were properly characterized in the status report that was delivered and presented to the EAC Standards Board and EAC Board of Advisors at their

May 2006 meetings. The following is information regarding their concerns about the characterization of their comments in the status report:

- Craig Donsanto, Director, Election Crimes Branch, Office of Public Integrity, U.S. Department of Justice expressed some concerns about the accuracy of the consultants' summary of their interview with him. Specifically, he took issue with a statement stating that the Department of Justice had changed course from pursuing organized conspiracies to pursuing individuals. He provided examples of current cases against organized conspiracies.

Mr. Donsanto saw this summary among a number of materials provided to participants in the May 2006 Working Group meeting on this project. He was a participant because EAC had invited him to be Technical Advisor to the Working Group based on his 30 years experience in the federal prosecution of crimes involving elections and his recognized expertise in identifying and developing successful prosecution strategies for election crimes cases. Margaret (Peggy) Sims, the EAC Contracting Officer's Technical Representative (COTR) for this project was present when the consultants interviewed Mr. Donsanto and, after reviewing the summary, agreed that there was an error. The summary should have stated that the Department of Justice, in addition to the continued pursuit of organized conspiracies, had recently begun to prosecute election crimes committed by individuals (noncitizen voting, felon voting, double voting) to deter others from committing such violations. Mr. Donsanto provided his comments to Peggy Sims and she forwarded them to both consultants.

- Both Mr. Donsanto and John Tanner, Chief, Voting Section, Civil Rights Division, U.S. Department of Justice expressed concern about the accuracy of a reference to interviews with Department of Justice officials that was included in an EAC status report on the project presented to EAC's Standards Board and Board of Advisors public meetings in May 2006. The status report was based upon initial summaries submitted by the project consultants, which were written prior to the first meeting of the Working Group. Specifically, both DOJ attorneys objected to a bulleted paragraph that states that DOJ officials agreed they were bringing fewer intimidation and suppression cases. Both attorneys said this statement was false regarding voter suppression cases and provided examples of recent efforts against voter suppression. They also noted that in order to prosecute voter intimidation, federal law requires the act be accompanied by physical or economic threat. These cases would be criminal violations that would be prosecuted by the Election Crimes Branch, but that office has not seen such cases reported in years. (Mr. Donsanto remembered prosecuting only one such case in 30 years.) The consultants, however, relied on their own, broader definition of voter intimidation. Mr. Donsanto and Mr. Tanner also noted recent actions by the Department of Justice as examples of the agency's efforts against voter suppression. Mr. Tanner directed his comments to Tova Wang and

provided a copy to EAC. Mr. Donsanto provided comments to Ms. Sims. Ms. Sims sent Mr. Donsanto's and Mr. Tanner's comments to both consultants.

Both Donsanto and Tanner had access to the EAC status report because the Help America Vote Act Section 214(a)(12) and (13) [42 U.S.C. 15344(a)(12) and (13)] requires the membership of the EAC Board of Advisors to include the chief of the Office of Public Integrity of the Department of Justice, or the chief's designee, and the chief of the Voting Section of the Civil Rights Division of the Department of Justice or the chief's designee.

Communications responsive to this question have been provided in attached documents.

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?

It is important to note that EAC's report was released and adopted at a public meeting of the agency. What has not been released is one of a number of drafts that were developed in reaching the final product. Assuming that the question relates to why the draft report provided by the contracted experts in July 2006 was not released, there were concerns that led EAC to make changes to the draft provided by the contracted experts. First, after reviewing the research and data upon which the report was based some of the "themes" or conclusory statements made in the report were not supported by the underlying research and data. Please see the examples below:

A. Unsupported Consultants' Theme Number One: In the consultants' draft, Interviews; Common Themes, page seven, the second bullet, it says "there is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, 'dead' voters, noncitizen voting and felon voters."

EAC Change: EAC's report, page one, second paragraph: "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 constitutes the most common acts of fraud or intimidation."

Reason for the change from draft to final language -- The statement in the consultants' draft report is based only on interviews with 24 people, not on the entire body of research that was conducted. The statement in the final EAC report is based upon the entire body of research, including the articles, books and cases which constitute the appendices. The EAC did not feel that a conclusion about the pervasiveness of fraud could be reached solely upon the statements of 24 people.

B. Unsupported Consultants' Theme Number Two: Consultants' draft, Interviews; Common Themes, page seven, it says there is "evidence of some continued outright intimidation and suppression..."

EAC Change: EAC's report, page seven, states that "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). One of the tasks assigned to the consultants was to provide a common definition of "voter intimidation," as these terms are viewed and interpreted differently by the public, political parties and the courts. The consultants did not provide a common definition for "voter intimidation."

C. Unsupported Consultants' Theme Number Three: In the consultants' draft, second bullet, page seven, it says "most people believe that false registration forms have not resulted in fraud." This statement was based solely upon the interviews with 24 people, not on the entire body of research.

EAC Change: EAC's language in the final report, page nine, first paragraph: "For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote 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..."

Reason for the change from draft to final language The sentence in the consultants' draft was only based upon the 24 interviews, not the entire body of research. EAC did not feel it was appropriate to include a statement describing "virtually universal agreement" based only upon interviews, so it was not included. EAC chose to assign attribution to the interviewees, making it clear that this was anecdotal evidence. Assigning this opinion specifically to the interviewees, not "most people," was a more accurate presentation of this opinion.

Second, the draft report did not satisfactorily cover all of the elements required by the experts' contract and, in some cases, exceeded the scope of the contract. The document did not contain a definition that in any way clarified or provided consensus on the meaning of the terms "voting fraud" and "voter intimidation." The expert's definition was ultimately overly broad and not useful for conducting future study. The EAC needed a definition with clear boundaries that could be used to create measurable and repeatable

findings. In addition, the draft contained conclusions that were not within the scope of the project and counterproductive to its purpose. This project was intended to set the stage for a future comprehensive study of voter fraud and intimidation. This is borne out in the employment contracts of the individuals appointed to work on the project. They were to provide a "summary" of existing research, create a working definition of voter fraud and intimidation and gather recommendations for the methodology of a future study. Providing conclusions in this study was neither warranted by the caliber of work done, nor consistent with the goal. The EAC did not want to make unsupported, partisan conclusions about voter fraud before the agency has a chance to launch its in depth study. Third, after reviewing the draft text provided by the consultants, it was clear that the writing of the document was not consistent with the quality and style of other EAC products, including the fact that the document was written in three different voices (first person singular, first person plural, and third person plural).

As a part of their contract, the experts were tasked to do several things: 1) review and summarize existing research on the topic, 2) provide common definitions of voting fraud and voter intimidation, 3) offer suggestions for how to conduct a thorough study of these topics in the future based upon these definitions and an initial collection of data, and 4) convene a working group and report on their comments, deliberations and recommendations regarding the research effort. EAC's role in developing a final report was to highlight these definitions, and provide a roadmap for future study of these important topics. Specifically, EAC made the following changes:

- EAC reorganized the document in the manner that seemed most suitable.
- EAC added language to reflect the recommendations adopted by the Commission.
- The consultants' draft was written in three different voices, which EAC corrected.
- EAC added clear definitions of "voting fraud" and "voter intimidation," which the consultants did not provide.
- The consultants offered a section of Common Themes near the front of the document. EAC did not ask for the consultants to provide such information, and after reviewing all of the data provided by the consultants determined that the material reviewed by the consultants did not support their conclusions. Consequently, the majority of the changes and edits were made to the language in this section.

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.

The EAC project manager for this study had many meetings with the experts concerning their work, their products, as well as the methodology of their research. The experts were continually provided feedback on their proposed working group members, lists of persons to be interviewed, as well as having been provided with many, if not all, of the cases and

news articles that they reviewed as a part of their research. Furthermore, EAC staff from the General Counsel's office was asked, early on, to provide input and feedback to the experts on their definition of "voting fraud" and "voter intimidation" as well as to provide guidance on the scope or coverage of those terms. For example, the first definition received from the contractors, which included a type of negligent or quasi fraud, was soundly rejected.

The EAC project manager for this study also had conversations and email communications with the experts concerning the summaries of interviews with the two Department of Justice interviewees and the concerns that the project manager had from her own participation in one of those interviews as well as the concerns voiced by the interviewees about the characterization of their statements. The consultants were reluctant to edit the relevant summaries. Eventually, they did revise their descriptions, but the resulting text still conveyed an erroneous impression.

Email correspondence and documents regarding these types of communications have been provided in the attached responsive documents.

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? Since the contracted experts are referred to in the Commission's released report, were contractors allowed a chance to review or edit that Commission's final report that was released in December 2006?

It is important to note that the Commission did not produce a summary of the Voter Fraud/Intimidation report. The EAC produced a complete report of the study which it adopted at its December 7, 2006 public meeting. The EAC report was prepared and edited by various staff members at EAC, including Margaret "Peggy" Sims, Election Research Specialist; Juliet Hodgkins, General Counsel; Gavin Gilmour, Deputy General Counsel; and Jeannie Layson, Communications Director. In addition, Commissioners Gracia Hillman and Paul DeGregorio offered changes to certain portions of the report, including changes offered to the interview summaries and report language.

As for the credentials of these individuals, Ms. Sims has more than 30 years experience working for the Federal Election Commission and then the Election Assistance Commission. Twenty of those 30 years have been spent working in the area of election administration, including researching and communicating information on laws, procedures and technologies used in election administration. She has managed or assisted in managing projects on election administration issues, conducted either in-house at the FEC or EAC, or conducted by outside contractors, experts or consultants. These projects include:

- Writing the first maintenance and fail-safe voting sections of the FEC's Guide to Implementation of the National Voter Registration Act (NVRA);
- FEC reports to Congress on the implementation of NVRA;
- Assisting in the development of FEC's 1990 and 2002 Voting System Standards; and
- Participating in all other research projects conducted by the FEC Office of Election Administration from 1986 to 2003.

Although none of these projects specifically focused on voting fraud or voter intimidation, these issues were relevant and considered as a part of most, if not all, of the following FEC research efforts: Absentee Voting: Issues and Options; 1990 Voting System Standards; 2002 Voting System Standards; and All-Mail Ballot Elections. Ms. Sims' work at EAC has included being principally responsible for the distribution of Section 251 funds and the review and management of the \$2.9 billion in Section 101, 102 and 251 funds made available under HAVA.

Ms. Hodgkins is the General Counsel of the EAC and has more than 10 years of experience in the active practice of law in the areas of labor, employment, elections, administrative and government law. Prior to joining the EAC she served as the General Counsel to the Louisiana Department of Elections, where she served as counsel for all aspects of the operations of that department including the operation of a voting fraud investigation unit. In addition, Ms. Hodgkins provided training to law enforcement on voting fraud investigation, reviewed investigations of alleged voter fraud, transmitted these investigations to local district attorneys for prosecution, and managed outside counsel in the support of this program. In addition, Ms. Hodgkins represented the Louisiana Commissioner of Elections in all contested elections – the Commissioner of Elections was a required party to any and all election contests throughout the state. Several of these cases involved allegations and testimony of alleged voter fraud.

Mr. Gilmour is the Deputy General Counsel of the EAC and has over eight years of experience in the practice of law. Prior to joining the EAC, Mr. Gilmour served in the United States Air Force as a Judge Advocate General. Mr. Gilmour has experience as a Federal criminal prosecutor, civil litigator and administrative and civil law practitioner. Mr. Gilmour has been with the EAC for over two years and his experience with the United States government has been an invaluable asset in establishing EAC's voting system testing and certification program, laboratory accreditation program as well as the general operations of EAC. Ms. Layson has been in the field of communications for 16 years, serving as spokesperson for a member of Congress, a governor and on campaigns for Governor, U.S. Senate, and the U.S. House of Representatives.

The Commissioners did not offer any specific instruction as to how to review the draft report and research or what, if any, portions of the report to emphasize. The project manager, and subsequently those that worked in her place, were responsible for providing a report for Commissioner approval. Individual EAC commissioners provided some input during the process. Any communications from Commissioners to staff relative to

reviewing the draft report and preparing EAC's final report have been provided in the attached responsive documents.

The experts were no longer under contract at the time that the EAC's report was being finalized. Thus, the experts were not asked to review or comment on EAC's report.

5. Please provide copies of any electronic or written communications between Commission employees that relate to the editing of the Voter Fraud/Intimidation report.

Responsive documents are attached.

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.

An October 1, 2006 article in *USA Today* erroneously reported that the Commission had decided not to officially release the vote fraud report. The email from Mr. Serebrov, which the *New York Times* article excerpted, specifically responded to an October 13, 2006 email from Peggy Sims, who sought to reassure Ms. Wang and Mr. Serebrov that the *USA Today* article was in error and that there had been no attempt by the Commission to delay the release of the consultants' report. Ms. Sims' email noted that the Commission had not yet seen the consultants' report and she took responsibility for the delay.

In addition, Mr. Serebrov's email responded to comments that were made on the Rush Limbaugh show as well as calls/communications that were received from a member of the working group regarding the content of the draft report that was presented to the working group in May 2006.

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?

On December 7, 2006, EAC voted at its public meeting to adopt a final report on its Voting Fraud and Voter Intimidation Study. The report was the culmination of work conducted by EAC staff and two contract employees hired by the Commission. EAC did not vote to reject the work of the experts; rather, EAC voted to adopt its own report that was based on the research conducted by those experts. As in any Federal Agency, the draft or opinion of every employee or contractor is not a basis for the matter to be taken

up to the agency head or commission. The project manager (and those who eventually worked in her stead) was responsible for determining when the project and report were complete and responsive, before forwarding the matter to the Commissioners through the Executive Director. The report that was forwarded to the Commissioners for action was the report deemed ready by the staff responsible for the project.

Just as with any EAC public meeting, notice was provided of the meeting and the Commission's anticipated actions at that meeting in the *Federal Register* as well as on EAC's Web site prior to the meeting.

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.

EAC has not publicly released the draft Voting Fraud and Voter Intimidation report provided by the contracted employees in July 2006. That report was provided to Congress after a requested by Congressmen Jose Serrano, and Maurice Hinchey on behalf of the House Appropriations Subcommittee on Financial Services. The draft report was provided to the Committee with the explanation and understanding that the document was covered by exemption 6 to the Freedom of Information Act, which covers predecisional or deliberative documents.

Several individuals and groups have requested the release of the draft Voting Fraud and Voter Intimidation report provided by the contracted employees in July 2006, including requests from the Brennan Center for Justice of the New York University, the People for the American Way and Barbara Arnwine (Ms. Arnwine, a member of the EAC Board of Advisors, also offered a unsuccessful resolution urging the release of the experts' draft report). Each of the requestors, with the exception of Congressmen Serrano and Hinchey, were told that the document was predecisional and covered by the deliberative process privilege. The public requestors were not provided with a copy of the draft report.

Copies of requests for the draft Voting Fraud and Voter Intimidation report as well as EAC's responses have been provided in the attached responsive documents.

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.

This question appears to deal with the Voter Identification Study; however, we respond to this question as if posed regarding both of the studies around which inquiries were made in your letter. Our search of communications has not revealed any specific requests from state or local election officials. However, it is important to note that early on, in February 2005, EAC engaged its Board of Advisors, a Federal Advisory Committee consisting of members from the election administration, government and advocacy arenas, to comment

on and help EAC prioritize its research projects. Feedback was taken from that meeting and used to establish a priority for EAC research efforts. A copy of the minutes of that meeting has been provided in the attached responsive documents.

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.

EAC research projects such as the Voter Identification study conducted by Eagleton are competitively bid. When research projects call for experts or consultants, EAC attempts first to find a non-partisan expert or consultant for the job. When one does not exist, as in the case of the Voting Fraud and Voter Intimidation study, EAC has assembled a bi-partisan team to conduct the research and product a draft report.

While EAC Commissioners are appointed on a partisan basis – recommended by the leaders of the two major parties in each of the House and the Senate – EAC staff are not appointed based on their partisan affiliations. In fact, EAC staff is covered by some of the most restrictive provisions of the Hatch Act. See HAVA, Section 811. The staff of this agency has been chosen for their expertise and experience in the field of election administration, in managing research projects, or in developing and operating a government agency. All statements of work for major research projects have been approved by the bipartisan Commission. These statements serve as the direction for both the EAC staff and for the contractors, experts and consultants to conduct their work. EAC staff is expected to produce a product using the outside contractors, experts or consultants that completes the goals and objectives of the study as established in the statement of work.

EAC also uses its Federal Advisory Committees, the EAC Standards Board and EAC Board of Advisors, to vet and react to many of the research projects that it has ongoing. These are public bodies and their meetings are conducted in public. A status report regarding the Voting Fraud and Voter Intimidation project was presented at the public meetings of the EAC Standards Board and EAC Board of Advisors in May 2006. These meetings were noticed and open to the public. The board was, in fact, critical of the work of the contract employees as of that date.

EAC has voted to adopt, or in some cases not adopt, the results of its research projects in a public forum, whether that be through its public meetings or through its tally voting procedure, which is available to the public and on which EAC reports in each of its annual reports to Congress. Last, EAC has developed a bi-partisan subcommittee on research to review and guide EAC's current and future research efforts.

CONCLUSION

We, at EAC, have been pleased to provide you with information regarding these two research efforts. In addition, we would like the opportunity to brief you and your staff on

these issues and answer any questions that you may have. I will be contacting your offices to set up a time that would be convenient.

Thank you for your interest in our research efforts and your work on election administration issues. If we can provide additional information or answer any questions, please do not hesitate to call on us.

Sincerely,

A handwritten signature in cursive script that reads "Donetta Davidson".

Donetta Davidson
Chair

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.

Commissioner Davidson

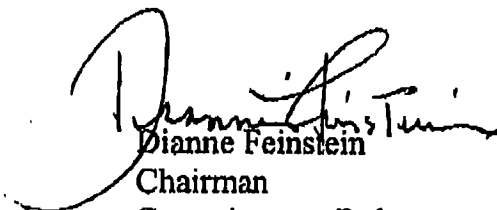
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April 12, 2007

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

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.