

Edgardo Cortés Testimony – EAC Public Meeting – October 4, 2007

The Help America Vote Act of 2002 (HAVA) transferred the responsibilities of the Federal Election Commission (FEC) under the National Voter Registration Act of 1993 (NVRA) to the U.S. Election Assistance Commission (EAC). The NVRA requires that EAC develop and maintain a voter registration form for federal elections that must be used and accepted by all covered jurisdictions. To accomplish this task, the EAC was given the authority to create regulations to implement the federal voter registration form. Not only does EAC have a responsibility to issue regulations regarding the form, but it must also have written internal procedures that address requests for changes to the form in a uniform and transparent manner. However, the absence of formal regulations and written internal policies and procedures does not relieve the EAC of its obligations under NVRA.

Since the creation of EAC, the staff has worked in a manner consistent with the FEC experience to make changes to the state instructions section of the form. The FEC Commissioners adopted a policy that allowed staff to make changes to the state instructions of the federal form consistent with state law in the six areas that FEC regulations required state information. These six areas were: state voter eligibility requirements; voter identification number required by the state; whether the state required a declaration of race or ethnicity; the state deadline for accepting voter registration applications; and the state election office address where applications should be mailed. Any other requests for changes were to be sent to the FEC Commissioners for a formal vote of the Commission in order to make the requested changes. This is the framework we have used for making changes to the state instructions section of the federal form.

EAC staff recommends that the Commission administratively transfer the FEC regulations concerning NVRA, begin the full rulemaking process once the administrative transfer is complete, and allocate sufficient resources to carry out these steps to meet EAC's obligations under NVRA. The staff also recommends the immediate adoption of a temporary policy to ensure that all responses to state requests are timely, uniformly, and transparently addressed.

The purpose of the staff's recommended temporary policy is threefold:

- To assist EAC in maintaining an updated federal voter registration form.
- To ensure that all requests continue to be treated in the same manner.
- To make sure the public is informed about how EAC decisions will be made regarding changes to the federal form.

We divided the policy into two sections that reflect the decision making process. I know you received my written recommendation earlier this week and that you'll be discussing it in detail in a few minutes so I'll just provide a very brief overview. I'll be available during your discussion if you have specific questions regarding any section of the proposed temporary procedures.

- Roles and responsibilities – describes who makes what decision
- Procedure – this section has 5 subsections that detail the entire decision making process
 - Request for changes
 - Processing
 - Decision authority review

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- Issuance of decision
- Request for reconsideration

Based on the recent actions of the Commissioners to move forward in fulfilling EAC's NVRA responsibilities, the staff believes that it would now be inappropriate to continue our involvement in making changes to the federal form without a formal internal procedure adopted by the Commissioners. We look forward to starting a thorough, transparent, and comprehensive process to meet our duties under the act. I'm happy to answer any questions that you have related to my statement or to the staff recommendation that I have presented.