

December 28, 2010

The Honorable Robert A. Brady
Chairman
Committee on House Administration
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Brady:

Thank you for your letter of December 15, 2010. We appreciate your support of and concern for the operations of the U.S. Election Assistance Commission (EAC) during this interim period in which it does not have a quorum of Commissioners.

Over the course of the EAC's existence, it has formally adopted several procedures and delegations of authority to its Executive Director and staff that meet a number of both the Commission's unique responsibilities under the Help America Vote Act of 2002 (HAVA), and the more standard responsibilities of all Federal departments and agencies. We are confident that, if moving expeditiously, the President nominates and the Senate confirms Commissioners to the two presently vacant seats, and similarly moves on the re-nomination of the third seat presently holding over in an expired term, none of the Commission's responsibilities will be seriously impaired or compromised.

On September 15, 2008, the Commission adopted a statement on *The Roles and Responsibilities of the Commissioners and Executive Director of the U.S. Election Assistance Commission*.

<http://www.eac.gov/assets/1/Page/EAC%20Roles%20and%20Responsibilites.pdf>. Broadly speaking, the Commissioners have reserved for themselves the exclusive authority to determine Commission policy, defined as a "high-level determination, setting an overall agency goal/objective or otherwise setting rules, guidance or guidelines at the highest level." The Executive Director and Commission staff is expected to prepare policy for Commissioner approval, implement policies once made, and take responsibility for administrative matters. We have asked our General Counsel to review all relevant statutes and EAC documents, and analyze the legal restrictions and impediments which now exist for the regular conduct of Commission business and the advancement of statutory responsibilities and mission priorities.

Several things are clear, however. Lacking a quorum, the Commission is unable to hold formal public meetings; adopt new policy; issue formal advisory opinions; accredit EAC Voting System Test Laboratories; act on appeals of (1) audit findings and recommendations,

and (2) voting system certification denials or revocations; and modify or update the Voluntary Voting System Guidelines, National Voter Registration Act (NVRA) regulations and presently existing NVRA registration form. Fortunately, none of these issues have immediate pending statutory deadlines and Commission staff continues to work them so that they are ready to be considered by the Commission immediately upon the reestablishment of a quorum.

With specific regard to the NVRA regulations referenced above, as you may know, the EAC published its notice of proposed rulemaking in the Federal Register on August 9, 2010. The public comment period ran through November 23. While the comments received were not voluminous, a variety of complicated and technical issues were raised that will require significant staff analysis before reporting back to the full commission for consideration. That will take some time, and we are hopeful that this interim period without a quorum can be put to productive use by staff for this purpose.

If you or your staff has additional questions, please direct them to the EAC General Counsel, Mark A. Robbins at (202) 566-0013 or MRobbins@eac.gov. Again, thank you for your support and interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Donetta Davidson". The signature is fluid and cursive, with the first name "Donetta" and last name "Davidson" clearly distinguishable.

Donetta Davidson, Commissioner