

**H.R. 672, TO TERMINATE THE ELECTION
ASSISTANCE COMMISSION**

HEARING
BEFORE THE
SUBCOMMITTEE ON ELECTIONS
OF THE
COMMITTEE ON HOUSE
ADMINISTRATION
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

—
Held in Washington, DC, April 14, 2011
—

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H.R. 672, TO TERMINATE THE ELECTION ASSISTANCE COMMISSION

THURSDAY, APRIL 14, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10:02 a.m., in Room 1310, Longworth House Office Building, Hon. Gregg Harper (chairman of the subcommittee) presiding.

Present: Representatives Harper, Nugent, Rokita and Gonzalez. Staff Present: Peter Schalestock, Deputy General Counsel; Kimani Little, Parliamentarian; Joe Wallace, Legislative Clerk; Yael Barash, Assistant Legislative Clerk; Salley Wood, Communications Director; Bob Sensenbrenner, Elections Counsel; Karin Moore, Elections Counsel; Jamie Fleet, Minority Staff Director; Kyle Andersen, Minority Press Secretary; Matt Defreitas, Minority Professional Staff; Khalil Abboud, Minority Elections Staff; Thomas Hicks, Minority Elections Counsel; and Gregg Abbott, Minority Professional Staff.

Mr. HARPER. I now call to order the Committee on House Administration Subcommittee on Elections oversight hearing regarding H.R. 672, which is legislation terminating the Election Assistance Commission. The hearing record will remain open for 5 legislative days so that Members may submit any material that they wish to be included therein. A quorum is present, so we may proceed.

The Subcommittee on Elections oversees Federal elections and considers legislative means to improve and protect the integrity of our electoral system. To that end, in the 112th Congress this committee has held oversight hearings on military and overseas voting, the 2010 elections, and the operations and budget request of the EAC. At that hearing we explored multiple operational and managerial problems at the EAC and the statutory responsibilities that are complete.

Today I look forward to discussing H.R. 672, which would terminate the Commission and transfer its remaining responsibilities to a more appropriate agency. HAVA, passed in 2002, required updated voting equipment and standardized election-related procedures across this country. The legislation also established the Election Assistance Commission to disburse funds and assist States in their obligation to meet the requirements of HAVA.

Today, nearly a decade later, after most States have met the major requirements of HAVA, little funding remains to be disbursed. And yet with the bloated, management-heavy budget and

a demonstrated inability to manage its resources wisely, the EAC continues to operate providing little, if any, real assistance to the States at significant cost to taxpayers.

The Commission's chronic issues have included an astounding doubling in staff, while the Commission's responsibilities did not increase; a budget that spends more on internal operational costs than actual election assistance; questionable funding allocation decisions; and hiring processes that have led to multiple discrimination claims. In totality, the Commission has simply lived passed its usefulness.

As another example of the EAC's inability to function effectively, following an oversight hearing last month, this subcommittee sent written follow-up questions to the EAC with a response deadline of April 6th. Today it is April 14, and we still have not received responses to some seemingly straightforward questions.

Finally, I note that when HAVA was on the House floor in 2002, Congressman Hoyer cited a study showing that 4- to 6-million people could not vote or did not have their votes counted in the 2000 elections. In 2008, a successor study said the comparable figure was 4- to 5-million, after the EAC had existed for 6 years and spent over \$3 billion. Now the EAC's election programs have shrunk to one-third of its budget, so future improvements seems unlikely.

I believe the States benefited from Federal assistance to update voting machines and election procedures, no doubt; but the funding for those payments has ended, and the Federal Government cannot afford to keep spending money on an agency that has not produced measurable improvement.

I look forward to discussing these issues with our witnesses, particularly the minority whip, who, during his time on the committee, was instrumental in HAVA's passage. I look forward to hearing their thoughts on these troubling practices and why in both 2005 and 2010 the National Association of Secretaries of State adopted resolutions calling on Congress not to reauthorize or fund the EAC, why the very beneficiaries of the Commission's work no longer feel it is needed.

Since introducing H.R. 672, I have heard from many elections officials from across the country who have provided their suggestions and advice. I appreciate and value their input and suggestions, including maintaining the voting system testing and certification programs, and maintaining a formal role for election officials in the development of the voluntary voting system guidelines. Again, I appreciate this input and plan to incorporate much of it in an amendment to this bill. These are the types of constructive ideas I look forward to discussing today.

At a time of in excess of \$1.6 trillion deficits and a \$14.3 trillion debt, continuing to spend money on the EAC is unjustifiable. Simply put, if we can't cut spending by eliminating a commission that has so obviously outlived its usefulness and that is opposed by many of the elections officials that it is supposedly serving, then the system is broken.

Again, I thank each of our witnesses that are going to be here today and would like now to recognize my colleague Mr. Gonzalez,

the ranking member of this subcommittee, for the purpose of providing an opening statement. Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. Now, I remember when the Help America Vote Act was written and passed. I wasn't on the committee at that time, but I fought hard during the drafting to fix some of the problems that I saw were inherent in the draft bill. Mr. Hoyer probably remembers our discussions way back then. And I did have a strong reservation, but not for the reasons that are cited today as justifying passage of H.R. 672.

I want to make some acknowledgments. It is true that the Election Assistance Commission, having been created, has had its problems. No one denies that, including the Commissioners and staff. But it is not the first agency to have problems, and it was faced with a tremendous task: tackling the challenges of voters in 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, and American Samoa, and the thousands of different electoral districts within them. Perhaps it was in recognition of this challenge that during the 109th Congress the Republican-controlled Congress lifted the cap on EAC employment so they could staff up to tackle those goals.

The EAC remains a tiny Federal agency compared to others in our Federal Government. The chairman has mentioned the disproportionate amount of its budget that EAC spends on personnel costs, and this is one of the reasons for that. The reason, of course, is that every agency, no matter how large, has to fill certain requirements. You need someone handling accounting and human resources whether you have 5 people or 50. In business they call these "fixed costs", and they are one of the economies of scale enjoyed by large companies.

I know that EAC has tried to minimize the relative cost of their small size, first by outsourcing some functions to GAO, and now by cooperating with other small agencies to share some of those fixed costs.

But the real point isn't whether EAC is spending a lot or a little on personnel. The real question is, Does the work EAC produces justify the money that we spend on it. Now, I am of the opinion that few things are more important in our country and more deserving our support, including financial support, than ensuring that every American citizen's right to vote is protected, but that doesn't mean that I will sit still while a single penny is wasted on an agency that isn't helping to do that. So is EAC helping America to vote? It is my opinion, Mr. Chairman, that the answer is yes.

The chairman and others of my colleagues have mentioned that the National Association of Secretaries of State, a letter written some time ago calling for the dissolution of EAC. Of course, that resolution was first adopted in February 2005, as pointed out, when EAC was barely 2 years old and certainly going through the terrible twos.

It was renewed last summer, and Mr. Rokita and Secretary of State Browning have both cited the resolution. But I notice that the renewal wasn't sufficiently important to the association for them to update the resolution. So it still calls for EAC to fade out of existence, quote, "after the conclusion of the 2006 Federal general election."

I also note we have had the president of the association testifying before this subcommittee just a few weeks ago, and Minnesota's Secretary of State Ritchie had many complimentary things to say about EAC. So the opinion among Secretaries of State is clearly not unanimous.

There is a further point that needs to be made. The secretary of state is the chief election official in most, if not all, of our States. But, that means they are like the general who organizes the campaign. It is the local election officials who are on the front lines dealing directly with the voters and struggling to ensure that our elections, the very foundation of our democracy, run smoothly.

And what they do and what do they have to say when they are doing it? At our last hearing Susan Gill, supervisor of elections of Citrus County, Florida, spoke glowingly of EAC and how, quote, "the Help America Vote Act provided the continuity needed on the national level, but left the states to devise how best to serve their voters." I have never heard a better description of how our federal system is supposed to work.

Now, my own election official—because we all know that all politics, voting activity and how it is conducted, is truly local—but Jacque Callanen Bexar County, Texas, she speaks of EAC's "terrific outreach" and "fantastic" services. And Chairman Lungren's local election official, Ms. LaVine, speaks highly of EAC in her written testimony.

Indeed, Mr. Chairman, at this time I would ask unanimous consent to enter into the record a total of seven letters from local election officials from Virginia to California, Republicans and Democrats and nonpartisan, as well as letters from the League of Women Voters and the Leadership Council on Civil Rights and Human Rights.

Mr. HARPER. Without objection.
[The information follows:]

LANCE GOUGH
utive Director



March 31, 2011

The Honorable Gregory Harper, Chairman
 Subcommittee on Elections
 Committee on House Administration
 1309 Longworth House Office Building
 Washington, D.C. 20515-6167

The Honorable Robert A. Brady, Ranking Member
 Subcommittee on Elections
 Committee on House Administration
 1309 Longworth House Office Building
 Washington, D.C. 20515-6167

Dear Congressmen Harper and Brady,

On behalf of the Board of Election Commissioners for the City of Chicago, I am writing to express our agency's serious concerns with any legislative effort to eliminate or diminish the valuable role played by the United States Election Administration Commission (EAC). Only a decade ago, there was bipartisan recognition that our electoral system had serious flaws. Since then, through the bipartisan implementation of the Help America Vote Act (HAVA) and the commensurate creation of the EAC, we have completely reversed course for the better. Together, we have built new standards, safeguards and systems for balloting programs that are accurate, accessible, secure and verifiable. We must be mindful of this past, because the removal of the EAC would come precisely at a time that we are likely to begin exploring new voting technologies.

It is often said that those who fail to appreciate history are doomed to repeat it. To understand the importance of a robust EAC, we must be mindful of the historic events that prompted leaders of both political parties to pass HAVA and, by extension, create the EAC. The 2000 Presidential Election shook the confidence in our democracy. Although Florida was the flash-point because of its razor-thin margin in the Presidential contest, it must be noted that the events in that state led to profound discoveries in jurisdictions small and large all across our great nation. Quite frankly,

we found that our balloting systems were deeply flawed and vulnerable, and that they possessed an inherent and totally unacceptable likelihood of failure.

The frailties of punch-card balloting are well documented and were witnessed by many. I am aware that the situation was witnessed firsthand by the esteemed Chairman of this Subcommittee. Those systems, here in Chicago and in Florida, failed to capture the voter's intent and defied anyone the ability to conduct a recount while keeping the ballots in tact. We found that our balloting systems around the country had disenfranchised tens of thousands of people by failing to capture the voters' true choices. Punch cards could record "under-votes" that wrongly indicated the voter had made no selection at all. Punch cards could just as easily contribute to "over-votes" that errantly suggested that a voter chose more than one candidate, thus erasing their own vote from the count. Worst of all, after Election Day, the punch cards had fragile and tiny rectangles of paper – hanging, dimpled, pregnant and swinging chads – that made it virtually impossible to conduct an orderly recount on a massive scale without possibly changing the condition of the cards with each handling.

In hearings on Capitol Hill, our Congressional Leaders would find that:

- Voters with physical differences had no ability to cast ballots privately and independently using outdated 20th Century systems of lever machines and punch cards;
- The slightest flaws in a ballot book, or even the wrong insertion of a punch card by the voter, could lead to voting for a different candidate;
- Repeated handling of punch cards in recounts might exacerbate their frailties;
- Standards for balloting systems, and even the paper used for punch cards, varied from state to state, and even from county to county;
- No uniform standards existed for Pre-Election Logic and Accuracy Testing (PRELAT) from jurisdiction to jurisdiction; and,
- The Federal Election Commission had ample resources devoted to campaign finances, but no central authority to oversee and develop standards for balloting systems.

These experiences marked a turning point for elected officials and election administrators everywhere. As with other troubling episodes in our history, America employed ingenuity and a sense of common purpose. We invested in technology and training. We created a better balloting system. Through the EAC, we also created standards for testing and certification of equipment. Today, we have balloting systems that are truly accessible and designed to capture and safeguard the voter's

intent. We see statistically valid rates of under-votes, and we have made it virtually impossible to over-vote a ballot – unless that is truly the voter’s intent. In Illinois, and in many other states, there also are now paper trails that the voters may use before casting their ballots. It is also a paper trail that election administrators, campaigns and the courts may use later to audit or recount the election returns in an orderly fashion.

But most importantly, we now have a central agency that takes the responsibility for the processes involved in testing and certifying equipment. Folding the EAC into a subdivision of a larger agency creates two distinct risks. The first is the likely elimination of a clear line of responsibility for this function, one that is at the core of our democracy. We run the risk of minimizing the very activities that are inherent in developing and maintaining uniform testing standards for balloting systems. The second risk is the possibility of not saving money by moving this operation into another agency. Essentially, our concern is that we would return to a pre-2000 climate and mentality with nothing to show for it.

This is important, because we are receiving inquiries already about the prospects for Internet-based voting, both from the Pentagon and from those looking at cost saving alternatives in the future. Additionally, we will undoubtedly need to pursue upgrades of the balloting systems that we have acquired in the last decade as we discover more affordable alternatives, such as poll books that allow for real-time systems to allow for more affordable vote center systems and same-day registration. As we move in any of these directions, it is vital to have the programs we have created at the EAC to test and certify equipment and systems to assure that we continue to employ the best practices. The future of our ever-evolving electoral systems demands nothing less.

I would be pleased to provide additional information on this issue and would gladly answer questions you may have regarding the importance of HAVA and the EAC to the future of the electoral franchise. Please call on me (312) 269-7970 with any questions regarding these matters.

Sincerely,



Lance Gough
Executive Director

MARYLAND

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 Administrator
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 Deputy Administrator

March 28, 2011

Via Facsimile Only

The Honorable Gregg Harper
 Committee on House Administration Subcommittee on Elections
 1309 Longworth House Office Building
 Washington DC 20515

Dear Chairman Harper:

As the Chief Election Official for the State of Maryland, I would like to express my opposition to H.R. 672, the legislation that would terminate the U.S. Election Assistance Commission (EAC) and transfer some of its statutory functions to other federal agencies.

Admittedly, the EAC has previously struggled to serve the elections community. The agency, however, has made great strides over the last couple of years, and it is now an integral part of the administration of elections. State and local election officials are the beneficiaries of the streamlined and more efficient voting system certification program and information clearinghouse publications and have valuable access through the variety of boards and informal roundtables sponsored by the EAC. Terminating the EAC and transferring its statutory duties to other agencies will likely negatively impact the elections community and ultimately voters.

In addition to terminating the EAC, H.R. 672 terminates the Technical Guidelines Development Committee, the Board of Advisors, and the Standards Board. Eliminating the boards that provide important and instructive advice and guidance means that valuable insight and input from both election and non-election experts is, at a minimum, not formalized or required and potentially not even collected and considered.

Lastly, the agencies to which the EAC's statutory duties are transferred are problematic. It is undisputable that the National Institute of Standards and Technology (NIST) has some of the finest scientists in the world and that their contributions to the election community have been meaningful. Their expertise, however, is not in elections administration, and the EAC provides an independent and election-oriented filter to NIST's scientific recommendations on election technology and procedures.

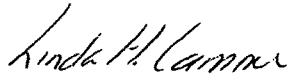
Like NIST, the Federal Election Commission (FEC) is problematic but for different reasons. It is generally recognized in the elections community that the FEC's prior efforts in elections administration were not productive as their primary mission was campaign finance and elections administration lagged behind in the agency's list of priorities. For example, the

Letter to Chairman Harper
March 28, 2011
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National Association of State Election Directors managed the previous voting system certification program because the FEC did not provide the necessary resources to do so. Transferring election administration duties back to the FEC - even with the EAC's existing subject matter personnel - will not improve election administration across the country and will likely hamper the important and meaningful contributions already made by the EAC.

Thank you for the opportunity to express my concerns about H.R. 672. If you have any questions about my concerns, you may contact me or have a staff member contact Nikki Baines Trella of my office at 410.269.2843.

Sincerely,



Linda H. Lamone
State Administrator

cc: The Honorable Robert Brady, Ranking Member
Dana Thompson, Office of the Governor

LHL/nbt



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Co-Chair

Gregory F. Peterson
Commissioner

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April 4, 2011

Hon. Dan Lungren
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2313 Rayburn HOB
Washington, DC 20515

Hon. Gregg Harper
Chair, Subcommittee on Elections
307 Cannon HOB
Washington, DC 20515

Hon. Robert A. Brady
Ranking Member
Committee on House Administration and
Subcommittee on Elections
102 Cannon HOB
Washington, DC 20515

*RE: H.R. 672, An Act to terminate the
Election Assistance Commission*

Dear Congressmen Lungren, Harper and Brady:

It has come to my attention that there is a movement in Congress and elsewhere, to dissolve the US Election Assistance Commission (EAC). It is important for those with the authority to do so, to understand the service this agency provides to election officials across the country and across all jurisdictions. The EAC's predecessor, the Federal Election Commission (FEC), never provided the resources and support currently available to officials such as me, which we all understood was a prime reason for creating the EAC. It was a good idea then, and it is a good idea still, today.

The management and staff of the EAC understand the dynamics of election administrators and the problems they face on a daily basis, especially those persons at the EAC who brought with them, election administration experience. This is the nexus for the guidance, counsel and support we all need – now more than ever. Dollars are

precious at every level of government, and the EAC is able to provide avenues for garnering knowledge such that all may benefit from the lessons learned (often the hard way) by a few.

Standards for next-generation voting equipment, the economy of scale for voting system certification efforts, a clearinghouse for issues related to implementation problems or successes encountered by officials and the EAC-led efforts to foster a dialogue between itself and state and local government election administrators – all key components of an umbrella provider of services essential to the success of elections we run, and all provided to us by the EAC.

Study grants provided and managed by the EAC also have considerable value for us, and once reviewed and published by the EAC, have proven most helpful in providing nationwide learning opportunities. The EAC's use of webcasting meetings is most helpful, and perhaps could be expanded to include a number of other meetings for which significant dollars are spent on travel. In fact, a number of elections administrators, including this one, have adopted the EAC's example and now utilize webcasting opportunities to accommodate many of New York's discussion groups, task force and ad hoc committee meetings

While there is always room for improvement in any agency, putting the responsibility for the collection and distribution of critical election-related data in the hands of those who know it from its roots, is what the EAC has managed to do. To dismantle the EAC and ask that the FEC take us all back to square one is not the best use of federal funds, and may result in each state and local election office spending more money than they have access to, in order to secure the information, guidelines and materials essential to what we each do, in the name of fair, accessible and accurate elections.

Please reconsider any movement to dismantle the EAC – the cost of doing so must be measured in more than dollars and in my opinion, the measures I have articulated provide a valuable service that hopefully will continue.

Sincerely,



Robert A. Brehm
Chief Election Official and Standards Board Member

cc: Honorable Charles E. Schumer
Honorable Kristen E. Gillibrand
New York Congressional Delegation
Honorable Andrew Cuomo
Honorable Thomas F. O'Mara
Honorable Joan L. Millman
Honorable Thomas R. Wilkey
Honorable Donetta Davidson
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800-452-VOTE
TTY Relay 800-735-2929
FAX 661-868-3768

March 15, 2011

The Honorable Charles Gonzalez
United States Representative
1436 Longworth Building
Washington, DC 20515-4320

Dear Representative Gonzalez,

I am writing to express my concerns regarding H.R. 672, the bill proposing elimination of the Election Assistance Commission (EAC) and transfer of functions to the Federal Election Commission (FEC) and the National Institute of Science and Technology (NIST). I have grave concerns about the impact of the proposal and even more specifically about the proposed timeline for implementation.

The Election Assistance Commission has worked closely with states in establishing guidelines for the disbursement and expenditure of the Help America Vote Act grants. The Commission also provides response to inquiries from election officials relating to the appropriateness of proposed expenditures. There has been tremendous interaction between the Commission and election officials, facilitating greater knowledge and understanding on both sides. To terminate the Commission prior to exhaustion of grant funds, and transfer this oversight responsibility to another agency would greatly hinder the process.

My jurisdiction, like many others in the nation, has unexpended Help America Vote Act (HAVA) grant monies still available. We hope to find a voting system solution that will serve the voters reliably for years to come. Our current system, although it served our voters well, has been decertified in our state. It was subsequently re-certified but solely for use as an accessible voting device. We are left with the vote-by-mail paper-based portion of the system as a method for use by all other voters. We tally the vote on borrowed, aging ballot counters with replacement parts that are difficult to locate. I have concerns that the transfer of voting system certification back to the National Institute of Science and Technology (NIST), an agency not dedicated solely to elections technology, will further delay the current and future efforts of vendors to bring new systems to the market.

The Election Assistance Commission was created to oversee, as well as assist in achieving, compliance with the mandates contained in HAVA. While many improvements have been made in election administration under their auspices, there are still mandates yet to be fully realized. I urge you to oppose H.R. 672 and keep the Commission intact until at least such time as the mandates have been met and the grant monies expended in the manner Congress intended.

Sincerely,

A handwritten signature in cursive script that reads "Karen J. Rhea".

Karen J. Rhea, Chief Deputy Registrar of Voters
Kern County, California

KJR:os



STATE BOARD OF ELECTIONS

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March 27, 2011

Chairman Gregg Harper
Committee on House Administration
Subcommittee on Elections
1309 Longworth HOB
Washington, DC 20515

Ranking Member Robert Brady
Committee on House Administration
1307 Longworth HOB
Washington, DC 20515

RE: HR 672

Gentlemen:

As with any governmental agency, commission, department or other entity, methods of improving efficiency, streamlining procedures, and modernizing responsiveness should all be considered to maintain viability for constituents. These studies would be beneficial for the Election Assistance Commission. However, I strongly oppose HR 672. Termination of this Commission is not in the best interests of the elections process. The EAC serves a vital role in the conduct of Federal elections as well as the smallest municipal election. During an election, information sharing is vital - from clerical administration to public communication. The EAC can serve as a clearinghouse of information so that local jurisdictions receive real-time, necessary data during the conduct of a Federal election.

North Carolina adopted uniform procedures and forms for Elections Administration while still allowing for local input and decision-making that fits individual jurisdictions. Many of the problems Federal elections in the United States face can be traced to a lack of consistency and efficiency. The Election Assistance Commission (EAC) is the Agency that can provide that needed consistency and broad guidance. In fact, in its short history, the EAC already has adopted standards for voting systems that can allow for nationwide uniformity. Elections jurisdictions may use those standards as a baseline when choosing voting systems and vendors.

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603

One of the most disturbing trends occurring in the field of elections is the rapid turnover of commission officials, board members and elections staff. Although elections comprise a mere fraction of a percent of total budgets, the elections budgets are continually cut and reduced. Already understaffed, we are reaching a point of compromising our ability to adequately perform necessary duties. The EAC is essential, filling a vital role when a local jurisdiction does not have the personnel or equipment to conduct an election without assistance.

Even more important is the status of voting systems and equipment. By transferring the certification of voting systems to the National Institute of Standards and Technology (NIST) and the Voluntary Voting System Standards to the Federal Election Commission (FEC), the very real possibility emerges that there will be no communication or compatibility between the two efforts. This could lead to an impasse. Much progress has been made in the struggle to uplift voting equipment standards. The significant work done by the EAC will be lost amongst the myriad other NIST responsibilities.

Additionally, the FEC is already overburdened, understaffed, and currently does not handle any aspect of election administration. How can the FEC effectively advise state and local officials or provide the necessary support and guidelines needed for full voter confidence in the elections process? Piling more responsibility on an already encumbered agency will only lessen its efficacy and will do a disservice to taxpayers.

Perhaps a focus of this legislation should be to address keeping both the EAC and the FEC fully staffed with Commissioners so that each Agency has the ability to function at full capacity, providing much-needed guidance to election administrators while also judiciously stewarding taxpayer dollars. As HR 672 is written, there is no provision for the election community to provide input to either NIST or the FEC. This participation and dialogue is critical to make sure that all future voting systems truly meet the needs of the voter as well as the requirements and limitations of poll workers.

The EAC has amassed the most comprehensive public elections library in the country. Their website is a wonderful tool for both elections officials and the general public. Similarly, North Carolina's award-winning website has been heralded as an invaluable resource for our citizens. These communications tools are an integral facet of the way election administrators must interface with the American public in this rapidly changing technological world. Without dedicated resources for the public broadcasting of election information and news, the elections process will become less transparent and voters will become less aware of processes, procedures and laws.

Another facet of the elections process in North Carolina is the concept of the "Wellness Check." Wellness Checks are audits of our county boards of elections, serving as preventative maintenance to keep things on the right track and identify problems before they manifest. Results are available for public inspection, with the goal of further increasing voter confidence in elections. This concept could become a function of the EAC, be carried into other aspects of elections, and could further strengthen the integrity of and faith in the national elections process.

Although elections are the responsibility of the States and of local jurisdictions, they are mandated by Federal law. Congress needs to do its part to ensure the Federal government adequately and

appropriately contributes to local responsibilities. The EAC is an excellent way in which Congress may manifest its support. Reassigning these responsibilities to other, already strained entities will diminish the modernization progress accomplished during the first decade of the twenty-first century.

One of the greatest gifts Congress could give to the nation is its continued support and investment into the elections modernization process. By stewarding and tending the process begun in the earlier years of this decade, Congress can guarantee that all jurisdictions; large, small and somewhere in-between, are equally equipped to handle the future of elections; that each has modern and certified equipment; and that the resources are available so that every qualified voter in America has the same access to and confidence in the elections process.

Respectfully, I ask that you reconsider the submission of HR 672. My opposition to this legislation has been articulated herein. Please do not hesitate to contact me should you have any questions or require further commentary.

Yours sincerely,

 /s/

Gary O. Bartlett
Executive Director



DANA DeBEAUVOIR
Travis County Clerk

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March 16, 2011

The Honorable Charles A. Gonzalez
United States House of Representatives
1436 Longworth House Office Building
Washington, D.C. 20515-4320

Via fax: 202-225-1915

Dear Congressman Gonzalez,

I write to ask your support in maintaining the Election Assistance Commission (EAC) and to express my deep concern about HR 672, a proposal that would terminate the Commission. I currently serve as a local member of the Standards Board of the EAC.

The U.S. Election Assistance Commission was established as an independent commission to help guide the development of accessible voting systems, to oversee testing and certification of voting systems, and to serve as a national clearinghouse of information on election administration – work not covered by the Federal Election Commission.

Hampered initially by a lack of funding, the EAC in recent years has firmly established itself as a valuable resource for election officials across the country. The Commission has amassed a core technical and procedural knowledge of elections that is unsurpassed.

Election laws and procedures are increasingly complex, and elections receive constant scrutiny. At a time when local election administrators are looking for solutions and systems that merit voter trust and confidence, the EAC is a trusted and valuable resource. Exploring the potential for cooperative cost-savings, new source solutions and ways to ensure widespread voting integrity and confidence is needed now more than ever.

The EAC is the only place within the Washington milieu where local election officials can provide critical input on issues that affect elections year in and year out. In my dual roles as election administrator in Travis County and as the Elections Chair of the County and District Clerk's Association of Texas, I can affirm the importance of the Elections Assistance Commission.

I ask your consideration and active support to maintain this unique and vital agency.

Sincerely,

A handwritten signature in cursive script that reads "Dana DeBeauvoir".

Dana DeBeauvoir
Travis County Clerk

Mr. GONZALEZ. Now, I was surprised to read that one of the witnesses will testify that the problems EAC was created to address “are essentially resolved,” and that there is no need for EAC. Frankly, I am amazed that anyone would say that while we are still in the midst of the Wisconsin recount in which 14,000 votes went missing, votes that could be decisive in that race.

Now, Wisconsin is a race for a State office, but can you imagine how much trouble this would cause if it was a federal office that was in dispute? We don’t have to imagine. The citizens of Minnesota had to make do with only one senator for 6 months in 2009, less than 2 years ago, as the state struggled to administer the 2008 election, and next year is a presidential year that presents its own set of challenges.

EAC does have its problems. It has for some time. But it also remedied many problems, and the officials who run our elections say that EAC helps them do so better than any other agency. In such a situation, the proper response is to improve EAC, not throw up our hands in frustration.

In 1788, the country faced a problem: It had a government that didn’t work. Money was wasted, and problems were mounting as the government’s central purposes—establishing Justice, ensuring domestic Tranquility, providing for the common defence and promoting the general Welfare—weren’t being met. They could have said, “Well, we tried. The government we created did the main thing we created it for when in the Revolutionary War, but now it has just broken down, and we will dissolve it.” They could have said that, and some people did. But other people, we call them the Founders, said, No. Instead they created an improved government, one that has served us well for 222 years, but which itself has required 27 amendments, thus far, to improve its functioning.

If they could do that, which is monumental in our history, I think we can tweak, and we can improve and have a more effective EAC. It’s not a question of dissolving and doing away with something that is so important in protecting the rights of all Americans to cast their vote.

Thank you for your indulgence, Mr. Chairman. I yield back.

Mr. HARPER. Thank you. Does any other Member wish to be recognized for the purpose of an opening statement?

The gentleman from Indiana Mr. Rokita is recognized.

Mr. ROKITA. Thank you, Mr. Chairman.

We are hearing talking about ending a commission that has become a burden to the American taxpayers and simply, to my friend Mr. Gonzalez, is not needed. The Founders specifically said this in the Constitution when they left the procedures and processes surrounding our elections to the States to quite honestly do a much better job than any Federal bureaucracy can possibly dream of doing.

I know a little bit about this because as former secretary of state for Indiana, I have practical experience with the Election Assistance Commission and with conducting elections at the State level.

The EAC was created by the Help America Vote Act to help States replace old punch-card and lever-voting systems and to implement statewide voter registration databases. These were necessary updates, I certainly agree, due to the voting machine issues

illuminated in the 2000 Presidential elections. HAVA authorized \$10 million per year for EAC, but last year the EAC actually spent \$18 million. The budget request we received from EAC this year reflects administrative costs as 51 percent of the budget. Such funds are a waste.

In a hearing held in March, the committee heard firsthand accounts of the EAC's bloated budget, including an ever-growing staff with shrinking responsibilities and discriminatory hiring practices. Additionally it was found that the EAC was spending more money on management than on actual programs.

Mr. Chairman, like the fate of so many of the Federal Government's ideas and programs, this one has become nothing more than a large bureaucracy supporting a small program mandate that has largely been completed at this point. In 2005, I authored, and the National Association of Secretaries of State voted on, a resolution to dissolve EAC after the 2006 election. Congressman Gonzalez's point there is correct. That resolution was based on the fact that the task outlined in HAVA was nearly completed at the time.

Where Congressman Gonzalez, I believe, is wrong, Mr. Chairman, is that there was another resolution. NASS renewed the call to dissolve the Commission in 2010. Furthermore, Mr. Chairman, that vote at the National Association of Secretaries of State was nearly unanimous. Only two of our members voted against it, and we had more Democratic secretaries of state, I believe, at the time than we had Republicans. So it was certainly bipartisan. Furthermore, Secretary Ritchie, who Congressman Gonzalez mentioned, voted for the resolution to get rid of the EAC.

It is now 2011, and the EAC still exists. When the Commission was created, the Congress agreed that it should only be authorized, Mr. Chairman, for 3 years. Five years after that—the authorization date, after the scheduled deauthorization, the American taxpayers are still footing the bill, and the amount of work that is getting done can be done by some other agency, like the Federal Election Commission.

At a time of crushing debt and deficits, the money spent on EAC cannot be justified. I do not believe that the creation of the EAC was necessary in the first place.

As I noted earlier, the 2000 Presidential election brought awareness of needed changes to our voting system and registration databases. And with some assistance from the EAC at the time, the States—the States—took care of the problems. We didn't need another Federal bureaucracy. Furthermore, those changes could have been made by, like I said, other already existing entities.

To date we have spent \$147 million on the EAC, and, again, it wasn't necessary. I am proud to be a cosponsor of the chairman's bill to eliminate this duplicative, overly administrative agency. Supporting the EAC and its bloat, and its waste, and its inefficiency, and its ineffectiveness by comparing it to the bloat, the waste, the inefficiency, and ineffectiveness of other agencies is not the answer. That is not an answer at all. That attitude is what is part of the problem of this growing Federal Government that many of us were sent here to get under control.

I would like to thank the witnesses for being here. I look forward to hearing them, and I want to especially welcome my Sigma Chi fraternity brother Steny Hoyer for being here today.

Mr. Chairman, I yield back.

Mr. HARPER. Thank you, Mr. Rokita.

And it is now my privilege to introduce our first witness, who we are especially pleased to have here given your service on this committee, and I know your interest, long-time interest, on elections reform. And we could truly say you are a witness who needs no introduction, but you are now serving your 16th term.

Congressman Hoyer represents the Fifth Congressional District of Maryland and is the longest-serving Member of the House from Maryland in our history. First elected in 1981, Congressman Hoyer has had a distinguished career, having served as deputy majority whip, cochair of the Democrat Steering Committee, chair of the Democratic Caucus and majority leader. In the 112th Congress, he is the House Democratic whip, a position he also held from 2003 to 2007. And, of course, Congressman Hoyer is a former member of the Committee on House Administration and served as ranking member during consideration of the Help America Vote Act that created the Election Assistance Commission. We are honored to have Congressman Hoyer here and thank him for his dedication to public service.

Congressman, we look forward to hearing from you today, I obviously don't need to give you any instructions other than you are recognized for 5 minutes.

**STATEMENT OF THE HON. STENY HOYER, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MARYLAND**

Mr. HOYER. Thank you very much, Chairman Harper, members of the committee, and Mr. Gonzalez. I appreciate the opportunity to appear here before you. I want to thank you for inviting me to testify today on the important work of the Election Assistance Commission and why we must make sure that that work continues.

The work of the EAC matters to voters who deserve assurance that their vote will count on election day and to poll workers who across the country are being asked to do more with less and still ensure that polling places operate smoothly.

I would make as an aside the observation that not only do the States obviously conduct State elections, but they conduct, as we all know, extraordinarily important Federal elections. In the first 210 years or 15, 20 years of our existence, the Federal Government gave no assistance to them to do so.

Abolishing the EAC would be an invitation, in my opinion, to repeat the mistakes that blemished our democracy in 2000. The debacle of the 2000 Presidential election embarrassed the United States and showed just how flawed elections systems were. Regardless of their feelings about the controversial outcome of that election, Republicans and Democrats alike agreed that the Federal Government had a duty to step in and improve election systems and procedures so that every qualified citizen's vote is, in fact, counted; to provide States the financial and informational resources—I stress informational resources—to upgrade their voting and registration systems, train their poll workers, and improve ac-

cess for disabled voters. The result was the bipartisan Help America Vote Act, which I was proud to help write when I was the committee's ranking member. I might say that a very distinguished member, Bob Ney, worked with me on that and in a bipartisan way.

HAVA, which established the EAC, overwhelmingly passed the House 357 to 48. That was, of course, when your party, Mr. Chairman, was in control of the House of Representatives. This was not imposed by Democrats on the country, it was supported in a bipartisan way and overwhelmingly by the secretaries of state as well. It passed the Senate with only two votes against it. So this was not a partisanly imposed bureaucracy on the neck of the American people or the States. It was in a bipartisan way decided that this was an important addition to our election monitoring and effectiveness.

Before HAVA, the Federal Government worked to guarantee voting rights, but it had no serious involvement in the nuts and bolts of elections, conditions in our polling places and voter registration offices that ensure that our precious voting rights are translated into a vote that counts. That is not simply a concern of the State officials, which it is, it is clearly a concern of the Congress and the American people generally.

I presume the people of Indiana are concerned about whether or not we have fair voting in Maryland. Clearly the Maryland voters are concerned whether we have fair voting in Indiana. Why? Because the votes in both States affect who the President of the United States is going to be, so that there is a national interest in elections, not just a State interest.

For over 200 years the Federal Government in effect got a free ride from States when it came to elections. And, in fact, as I am sure the former secretary of state of Indiana knows, my brother in Sigma Chi, traditionally all States, all governments have had trouble with resources. Where was it easiest to cut? Elections.

Congress passed HAVA because it recognized that the Federal Government had to step up to the plate with the resources to help ensure that every vote is, in fact, counted. HAVA authorized 3.8 billion in grants to States to buy new voting machines, improve voter registration procedures and train poll workers. HAVA also created the Election Assistance Commission, a four-member bipartisan Commission, which only has two members right now, whose job is to administer grants to States and provide States with ongoing guidance. It is that really function that I think is a critically important one so that we have a national perspective as well as a State-by-State perspective. Just as important, it provides expert advice on how polling places and voting machines can be fully accessible to disabled voters, which Mr. Ney and I were both very focused on.

The EAC has created a comprehensive program to test State voting systems for accuracy. And use of this program has been shown to save our State millions of dollars and up to 12 months of testing time.

The EAC is dedicated to transparency and makes its methods and test reports public so that the public can hold both the EAC and voting machine manufacturers accountable. In addition, the EAC develops best practices for Armed Forces to ensure that the

votes of our troops are accounted fairly. Let me emphasize that. It also is involved, and we have made very sure, with making sure that those folks from Indiana or Maryland or Texas or any other State, including your own, Mr. Chairman, are treated fairly, notwithstanding they may be deployed to Afghanistan or Iraq or some other trouble spot in the world. Prior to the EAC, a narrow range of voting-related activities was conducted by the Federal Election Commission.

Let me comment on the comment the former secretary of state made about the Federal Election Commission perhaps could undertake the responsibility. The focus of the Federal Election Commission and the EAC are totally different. The Federal Election Commission is concerned about the financing of Federal elections and the enforcement of financing laws. They have their hands full, as all of us know. Totally different perspective than how elections are run as opposed to how candidates run. The FEC's mission is to ensure that campaign finance laws are obeyed. As I said, HAVA's lead sponsors quickly learned that voting-related issues are not the same by any stretch of the imagination. Transferring most of the EAC's function to the FEC, in my opinion, would be a mistake.

The EAC, as all of us have observed and with which I agree, has not been, is not now a perfect agency. Does it need oversight? Yes. Does it need efficiencies? Yes. Should you as the committee of jurisdiction and the Appropriations Committee as well look at these, make cuts where cuts are appropriate? Certainly. But should that mean that, therefore, we should abolish an agency which the Congress overwhelmingly decided was a useful, an appropriate function for the Federal Government to follow? I think not.

Mr. Chairman, I would submit the balance of my statement for the record and urge you as you consider this to improve, do not eliminate, because if we eliminate it, it would mean that the Federal Government will have no effective participation in ensuring that every vote counts, that the Voting Rights Act means something for every American whomever they might be, and Federal elections as well as State elections are held in a manner to give confidence to every voter that his or her vote will count and that the votes of every other American will count. And I thank you for this opportunity.

Mr. HARPER. And we thank you for being here, Congressman Hoyer. Thank you for your leadership in the House and your history of leadership on this committee, and we appreciate your insight.

Mr. HOYER. Thank you, Mr. Chairman.

Mr. HARPER. Thank you.

We will now call the second panel up, please.

I now would like to introduce our second panel of witnesses, some who probably just flew in. We appreciate that dedication to get here and to share your testimony.

Our first witness, the Honorable Delbert Hosemann, is the secretary of state of the great State of Mississippi. The secretary is serving his first term, having been elected in 2007. As chief elections officer from Mississippi, Secretary Hosemann has sought to protect Mississippians' right to vote by visiting precincts around the State during elections, working very closely with the circuit

clerks and elections commissioners, and supporting voter education programs such as Promote the Vote for young Mississippians and Vote in Honor of a Veteran.

The Honorable Kurt Browning is Florida's secretary of state, having been appointed this past January. He also served as secretary of state during the previous administration, serving from December 2006 until April 2010. Prior to that appointment Secretary Browning spent 26 years as the supervisor of elections for Pasco County, where he was extensively involved in Florida's election community, serving as the president of the Florida State Association of Supervisors of Elections; and as a member of Governor Jeb Bush's Task Force on Election Procedures, Standards and Technology; and as a member of the State Planning Committee for the Help America Vote Act.

Mrs. Jill LaVine is the registrar of voters for Sacramento County, where she is responsible for the day-to-day operations of the division of voter registration and elections. She has been registrar for almost 8 years and has worked in elections for over 24 years. In addition to her election duties, Mrs. LaVine is also responsible for the redistricting of the supervisorial boundaries following the 2010 census, a very exciting and thankless job. She is the cochair of the legislation committee for the California Association of Clerks and Election Officials, and is also a member of the election center. She has testified before Congress on paper audit trails, and therefore the EAC, regarding accessibility standards for voting systems.

Mr. John Fortier was a research fellow at the American Enterprise Institute, where he was the principal contributor to the AEI-Brookings Institution Election Reform Project and executive director of the Continuity of Government Commission. This month he joined the Bipartisan Policy Center as director of the Democracy Project.

You each have a wealth of knowledge and experience, and we will look forward to hearing your testimony shortly.

I would like now to recognize the distinguished Representative from New Hampshire, Congressman Charlie Bass, who will introduce our final witness.

Congressman Bass, you are recognized.

Mr. BASS. And I thank the chairman for your indulgence. And I understand that it isn't customary to have double introductions, if you will, for witnesses, but New Hampshire's secretary of state Bill Gardner is a special friend and a great citizen of the State of New Hampshire. He was elected secretary of state, I think, a couple of years after I graduated from college, and that is the New Hampshire tradition. We have had probably no more than a half dozen, maybe a couple more, secretaries of state in the history of our State. Secretary Gardner has served with distinction and integrity now for many years. He is a Democrat who has been elected time and time again by a legislature that for almost all of his career has been controlled by the Republican Party.

I spent a considerable amount of time and energy when I was in the New Hampshire Legislature and the New Hampshire State Senate working on issues involving elections and ethics, and Secretary Gardner was at my side for most of that period—all of that period of time. And I think during that time we made good

progress on various—many areas of election law in New Hampshire and also ethics.

Bill Gardner is also a personal friend, an advisor, and probably one of the less nationally or State-known individuals who wields power beyond any other secretary of state in the Nation because he has, in essence, the sole power to set the date of the New Hampshire primary, which is, of course, the first in the Nation and will remain so forevermore.

So without any further ado, I bring you my good friend, the secretary of state, Bill Gardner.

Mr. HARPER. Thank you, Congressman Bass.

I thank each of you for being here.

As I mentioned with Congressman Hoyer, the committee has received your written testimonies. At the appropriate time I will recognize each of you for 5 minutes to present a summary of that submission.

To help you keep the time, you will see in front of you a timing device. The device will be green for 4 minutes and will turn yellow when you have—1 minute remains. When the light turn red, it means that your time has expired, and we would ask you to bring it in for a landing at that point.

So we will begin with Secretary Gardner and ask you to please proceed.

STATEMENTS OF WILLIAM M. GARDNER, NEW HAMPSHIRE SECRETARY OF STATE; DELBERT HOSEMANN, MISSISSIPPI SECRETARY OF STATE; KURT BROWNING, FLORIDA SECRETARY OF STATE; JILL LAVINE, REGISTRAR OF VOTERS, COUNTY OF SACRAMENTO; AND JOHN FORTIER, AMERICAN ENTERPRISE INSTITUTE

STATEMENT OF WILLIAM M. GARDNER

Mr. GARDNER. Thank you. Good morning, Mr. Chairman and members of the committee. I was going to say something a little special about Congressman Rokita. And I want to thank Congressman Bass, who is like having a brother here with me, because we go back a long way. I worked with him when he served in the house, when he served in the senate. He chaired the elections committee in the senate and the ethics committee. He is from a distinguished longtime family; his grandfather was Governor, his father was a Congressman and then a Senate President.

I will get to the business.

I support this legislation wholeheartedly. I do so with very strong passion. When this Commission was established in 2004 and had its first meeting in March of that year, within 2 months it was making national headlines all across the country because letters had been sent out that hinted at having the EAC become the authority for determining whether we had a Presidential election or not in 2004—later in 2004. Actually when we went to our conference that summer, it was the 100th anniversary of the association, and as we talked about it amongst ourselves, that was the news in all the States. What was this new upshot Federal agency, what was it? And how could this be?

In my State there were several newspaper editorials that referred to how the country had an election in the middle of the Civil War, had an election during World War II. How can this be? So we made a statement as secretaries. We sent a letter. The letter made it to Congress. Within a week or so the Congress voted 419 to 2 saying that there is no Federal agency that is going to have this kind of authority; the States run the elections.

Well, after that, legislation was introduced in both the House and the Senate that would increase the authority of EAC, and give it rulemaking. That gave us a lot of concern, and in 2005 we passed this resolution saying that when the States complied with HAVA, it should go away, i.e. the EAC. And at the time we were discussing "How? With eight staff members, what were they for?" The concern was that in a few years there may be twice or three times as many. And so we passed it. As Congressman Rokita said, it passed pretty substantially, just less than a handful against.

And then 2 years later we passed another resolution in 2007 where we mentioned this again. And in 2008, we passed another resolution entitled "Maintenance of Effort," but it had in the resolution our concern about the expanding role in programs and why it should continue not to be reauthorized.

In 2009, we passed another resolution, and it was about payments and grants, because it appeared to us what was being done was not helping the States, but it was just creating more burdens for the States, and States particularly that have small staffs.

So then it continued. And that came to a point now where, as some of the States—many of the States were reminded in the last 3, 4, 5 months that there was payments money left that they hadn't taken yet. But what has been done is that in order to get that money, the States have to agree that it is grant money. Ninety-nine percent of the funding for the States has been payments money, but the director is called grants director. After our resolution it was changed to director of grants and payments. Now it is back to just grants. Why? Because it falls under OMB; there are more strings attached; there is more taking away from the States.

And so the bottom line—and there has been a continuing attempt to have more programs and power, more authority, and we don't like that.

In 2010, we did it again, and we just said, enough is enough. We have done this now five times as an association and feel very strong about it, and I applaud you for the legislation.

I might just say, Congressman Rokita came back when I thanked you for coming in. I just want to say that he is a friend and a former colleague, and I am proud, and I know a lot of the rest of us are, to be able to call him a Congressman and address him that way. We in New Hampshire have a reverence for Indiana, because if it wasn't for Indiana, we wouldn't have the first-in-the-Nation primary.

Mr. HARPER. Thank you so much, Secretary Gardner, for your testimony and for being here today.

[The statement of Mr. Gardner follows:]

Testimony of William M. Gardner**Regarding H.R. 672 to terminate the Election Assistance Commission
April 14, 2011**

For the record Mr. Chairman and members of the Committee, I am Bill Gardner and am appearing before you in support of H.R. 672. For the last 35 years I have served as New Hampshire's secretary of state. I have been elected to the position 18 times for a 2-year term by secret ballot of the 400 members of the New Hampshire House of Representatives and the 24 members of the State Senate meeting in joint convention for that purpose. I am the Chief Election Officer. New Hampshire elects its governor and entire legislature every two years on a ballot that includes a dozen different offices for national, state and county positions. We have 223 towns and 13 cities and all state primary and general election ballots are printed by the secretary of state and distributed to each of those cities and towns for each state primary and general election. After each primary and general election, many, and sometimes all of those ballots are returned to the state capitol where recounts are conducted. I have personally conducted 380 recounts since 1976 including several statewide and congressional recounts over those years. After the 2010 mid-term state primary and election we conducted 28 recounts.

The EAC has continuously reached beyond the power granted in HAVA, despite ongoing resistance resulting in a statement and several resolutions approved by the National Association of Secretaries of State from 2004 to 2010. Given current trends, the nation is at risk of losing the states as laboratories of democracy. States with sound election practices are in danger of being forced to abide by the lowest common denominator in election administration.

As an historical example, when the Federal Election Commission was established by Congress in 1974, it had minimal authority over the states. But it quickly gained rulemaking authority and "occupied the field" entirely eliminating the ability of states to determine the rules for how federal candidates funded their campaigns and the reporting requirements that had previously been the purview of the states. In doing so, Congress established a pattern of federal takeover of territory previously covered by state election law.

On February 16, 2004, the four newly appointed members of the Election Assistance Commission made their first public debut at the winter meeting of the secretaries of state in Washington. At that meeting the EAC told the secretaries of state that it had a speedy plan to distribute funds to states for voting technology upgrades. At that time, the thorny issue of the safety and security of voting on electronic devices became the center of attention and was elevated in the minds of the voters. A controversy was brewing over whether states should be using DREs and those who wanted a paper trail. The states needed the EAC to hit the ground running and heal this open divide.

Simultaneously, Congressman Rush Holt (D-NJ) and Congressman Steve King (R-IA) were circulating separate legislation to require a paper trail for vote counting devices. Senators from both parties were engaged in introducing similar legislation.

Camps were separated between those who wanted paper trails and paper ballots and those who preferred DREs. The newly chosen EAC chair, DeForest "Buster" Soaries introduced the EAC by saying "We are a very diverse commission. We have a Hispanic lawyer, an Italian administrator, an African American executive and a Baptist preacher." He did not mention anything about their qualifications, as if the diversity of the members was all that mattered.

Out of the gate, before their first official meeting, Chairman Soaries stated, "We have some flaws, but the truth is that the error rates are very small with all technologies," He went on to say "Legislators are proposing solutions to a problem that doesn't exist. They're talking about 'What if?' scenarios." This was unfortunate, because the EAC had the opportunity to help move the country forward on a very

important election issue. It would have been helpful if the EAC had tried to bridge the divide between those who supported some sort of voting technology with paper and those who did not.

The first meeting of the EAC was on March 23, 2004. On April 19, 2004 and June 25, 2004, the newly elected EAC chair, sent letters to Condoleezza Rice, Assistant to the President for National Security Affairs, and Tom Ridge, Secretary of Homeland Security.

In his June 25, 2004 letters, EAC Chairman Soaries stated that “the federal government has no agency that has the statutory authority to cancel and reschedule a federal election.” He appeared to be hinting that Mr. Ridge or Ms. Rice should seek emergency legislation empowering the Election Assistance Commission to make such a call in the event of a terrorist attack or other disaster.

EAC Chairman Soaries’ letters set off a storm of outrage, and he responded by saying he had been misinterpreted. Articles appeared in Newsweek, Washington Post, and USA Today. In the State of New Hampshire, newspaper editorials quickly denounced this usurpation of power.

As NASS members were traveling across the country to the 2004 Summer Conference in New Orleans, the 100th anniversary of the association, much was being written and said about this issue in newspapers, magazines and on the national news reminding us that this country conducted elections in the middle of the Civil War and World War II, and asking questions about this upstart federal agency that was inserting itself where the states had always been. At that conference, the Secretaries crafted a letter to the EAC addressing EAC Chairman Soaries’ comments on the possibility of cancelling elections in the event of a terrorist attack. NASS voted to send the following letter, dated July 20, 2004, to the EAC Commissioners:

“We write to you in response to recent statements attributed to the Election Assistance Commission (EAC) regarding the administering of elections in the event of a terrorist attack. As election officials, we acknowledge our responsibility to conduct elections fairly, encourage voters to participate, and continue to safeguard our polling places. Although we welcome the EAC’s recommendations for implementing the election reforms mandated by the Help America Vote Act of 2002, we recognize that the EAC does not have rulemaking authority in this or any area of election reform. We need and encourage the EAC to focus on the duties for which it has responsibility.....

At that conference, NASS also adopted a “Statement on Administration of Elections” which included a list of duties of the states’ chief election officials and a list of duties of the EAC under HAVA, as a reminder of what is each office’s “respective election administration responsibilities”.

The letter stated: “The administration and conduct of elections in the United States is chiefly the responsibility of state and county election officials.”

Congress responded to this controversy on July 22, 2004 by voting 419-2 in support of a Congressional resolution that “No federal agency or individual should be given the authority to postpone the date of a national election...” This ended the first chapter of the EACs attempt to grasp for more authority.

During 2005, likely presidential contenders and a recent party nominee for president introduced legislation that would give the EAC a role in rulemaking authority over heretofore state run elections. Bills were introduced in both the House and the Senate which would strengthen the EAC and remove or alter the prohibition against rulemaking authority in HAVA.

- Senators Hillary Clinton (for Senators John Kerry, Barbara Boxer, Frank Lautenberg, and Barbara Mikulski) introduced S. 450: The Count Every Vote Act of 2005. Among other things, it called for “Strengthening the Election Assistance Commission” and Striking Section 09, the Section of HAVA that prohibits rulemaking by the EAC.

- John Conyers (D-Mich) introduced H.R. 533, The Voting Opportunity and Technology Enhancement Rights Act of 2005, which would have expanded EAC rulemaking over certain areas of state administration of elections.

On February 6, 2005, NASS, at its Winter Conference, adopted the following resolution:

“Recognizing the U.S. Election Assistance Commission (EAC) task as a limited one, Congress, in the Help America Vote Act of 2002 (HAVA) wisely authorized the EAC for only three years. Any duties assigned to the EAC can be completed by the National Institute of Standards and Technology or by the state and local election officials who make up the HAVA Standards Board and its Executive Committee. The National Association of Secretaries of State encourages Congress not to reauthorize or fund the EAC after the conclusion of the 2006 federal general election, and not to give rulemaking authority to the EAC.

“The secretaries believe that allowing the EAC to evolve into a regulatory body is contrary to the spirit of HAVA, and that by 2006 the EAC will have served its purpose. Congress should preserve the states’ ability to serve as independent laboratories of change through successful experiments and innovation in election reform.”

In light of the EAC’s efforts to wrest power from the states by imposing regulations – against the explicit provisions of HAVA, Section 209, the following **resolution** was adopted on **February 11, 2007 at the NASS Winter Conference**, under the title of “NASS Approach to Federal Legislation”:

“Members of Congress should respect our country’s legal and historical distinctions in federal and state sovereignty and avoid preemptions of state authority when drafting federal legislation.”

“Federal legislation should not curtail state innovation and authority solely for the sake of creating uniform methods among the states.”

During the **2008 NASS Summer Conference**, NASS adopted a **resolution** reminding the EAC of the language in the Help America Vote Act of 2002, as follows: “Whereas, the Help America Vote Act of 2002 includes the following language:

“42 USC 15329 (PL 107-252, Section 209)“The (Election Assistance) Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-7(a)).”

“42 U.S.C. 15403. (P.L. 107-252, Section 253(c)). “(c) The specific choices on the methods of complying with the elements of a State plan shall be left to the discretion of the states.”

“42 U.S.C. 15485.(P.L. 107-252, Section 305): “The specific choices on the methods of complying with the requirements of this title (HAVA, Title III) shall be left to the discretion of the states.”

Notwithstanding the above laws, the EAC asserted its right to apply OMB circulars, which are regulations (see Code of Federal Regulations number for each) to the administration of HAVA requirements “payments”. In doing so, the EAC elected to conflate “payments” with “grants.”

In its **2009 Summer Conference**, NASS passed a more explicit resolution, reminding the EAC that a “payment” is a “payment” and a “grant” is a “grant” and that EAC regulations are restricted to the administration of the NVRA under HAVA Section 209. The **2009 NASS resolution** states:

“Be it Resolved that the National Association of Secretaries of State finds that:

“1. Under HAVA, a “payment” is not a “grant” and a “grant” is not a “payment;” and

"2. In effectuating its duties under HAVA, the EAC should create an accurate administrative record by using the term "payment" when the federal law means "payment", and it should use the term "grant" when the federal law means "grant."

Since NASS issued its 2009 resolution, the states have to sign extensive documents acknowledging that they are subject to grant regulations before the EAC will send them HAVA requirements payments. This policy is clearly contrary to the plain language in Section 209 of HAVA, the 2009 NASS resolution and the 2008 and 2010 Government Accountability Office decisions below.

The Government Accountability Office has issued two decisions that relate to these EAC actions. The GAO had previously determined that the EAC must disburse requirements payments to a state if the state's chief election officer signs the certification set forth in HAVA. GAO Decision B-316915, issued September 25, 2008, states as follows:

"EAC has no evaluative role. States must simply file a statement that the governor, or chief executive officer of the state, "hereby certifies that it is in compliance with the requirements" under HAVA. 42 U.S.C. § 15403(a). Whether a state will so certify is the only uncertainty and only affects EAC payment and the state's receipt of its formula amount."

"An obligation serves as the basis for the scheme of funds control that Congress envisioned in the various fiscal laws, including the Anti-deficiency Act. *See* B-300480, Apr. 9, 2003. For that reason, the eventual payment is not determinative of when an agency should record an obligation. Here, by operation of law, the state may fulfill the preconditions and be entitled to receipt of the funds through no actions on the part of the agency. Thus EAC has an obligation by operation of law and should record the obligation in its funds control system."

On April 28, 2010, the GAO took issue with the EAC policy of conflating grants with payments in its Decision # B-318831. In it, the GAO generally refuted EAC efforts to conflate "grants" with "payments," notwithstanding the following:

(a) Tom Wilkey's letter to the New Hampshire Department of State dated March 18, 2009 stating that the GAO had already, in Decision B-303927, "affirmed the EAC's determination that HAVA' Section 251 payments are grants."

(b) Testimony by the EAC Grants Director on September 2, 2009 before the EAC Commissioners, in which the Grants Director argued that legislative history should be the basis for interpretation of HAVA on the subject of "grants" and "payments."

GAO Decision B-318831 states, "To determine the purpose of an appropriation, the starting point is the plain meaning of the statute. If the statutory language provides an unambiguous expression of the intent of Congress, then the inquiry ends there. ... While views expressed in legislative history may be relevant in statutory interpretation, those views are not a substitute for the statute itself where the statute is clear on its face."

These examples show that the EAC unnecessarily makes work for itself to justify its existence. By the date of the February, 2005 NASS Conference, NASS members were told the EAC had eight full-time staff members. Some of the secretaries were concerned that the EAC would just continue to expand and there would be a continual reach for more programs and rule-making. In 2010 we were told that the EAC had 50 full-time staff.

The NASS resolution in 2005 was an attempt to prevent a likely outcome that the secretaries foresaw. By 2010, what we anticipated the EAC might do had transpired. After the EAC had failed to respond to the secretaries' repeated resolutions, NASS, at its **2010 Summer Conference** in Rhode Island, adopted a **resolution** renewing the 2005 call to terminate the EAC. In both of its NASS 2005 and 2010 resolutions,

NASS indicated that “any duties assigned to the EAC can be completed by the National Institute of Standards and Technology or by the state and local election officials who make up the HAVA Standards Board and its Executive Committee. I agree that the Standards Board should continue in some form.

H.R. 672 would eliminate the Technical Guidelines Development Committee (TGDC). I think the TGDC added value when it met. However, the EAC has only convened the TGDC once since 2007. The EAC has failed to continue this important work. There is an obvious need to assist the states and local jurisdictions, the voting systems industry, and the general public to plan for new generations of voting systems, to replace the states’ aging inventories. A transition to an agency that can provide practical direction under H.R. 672 could provide an opportunity for the TGDC to continue its important task.

I also want to offer reasons why certain EAC responsibilities could be transferred to NIST. NIST has an international reputation for credibility that U.S. manufacturing and particularly exporters depend on. If NIST loses its credibility, U.S. industry and jobs will pay the price. This represents a natural built-in credibility check that NIST cannot afford to compromise.

Traditionally, NIST has worked with industry and trade groups to establish reasonable standards that will foster domestic and international trade. It regularly convenes industry groups that come from widely divergent positions on technical matters, and helps them to cooperate in setting credible uniform standards. For over 100 years, NIST has been doing in other industries what the states still need in the voting systems industry.

It is my impression that NIST has done the work delegated by HAVA, including developing testing criteria and testing protocols, and advising and chairing the TGDC. Relying on its existing National Voluntary Laboratory Accreditation Program (NVLAP), NIST has established a new regime for selecting independent labs to assess voting systems. It did not have to reinvent the wheel to do so, because it already had many of these protocols in place. NIST has insisted in ensuring that Voluntary Voting System Standards are written to correspond to practical testing protocols, so that Voting System Test Laboratories can conduct tests to clear standards.

A decision to give authority to NIST in H.R. 672 would be a decision to opt for more credibility and more action in this important arena.

The EAC’s role in producing best practices and its Quick Start Brochures is not something I would consider as being of value to my state. What would be a best practice in my state, as I have mentioned earlier, might not be an option in other states because of differences in our customs and law in administering elections. When I have asked local election officials if they felt any of the Quick Start Brochures were helpful, there was no enthusiasm. I would add that the Quick Start Brochures on recounts were too elementary to be useful. There are some bigger issues, like provisional balloting and voter ID that the EAC has been directed to study. But these studies have been so controversial that few states have been inclined to follow them.

I want to give you an example of how faith in universally applied election solutions can be misplaced. National voter turnout statistics reveal that far reaching and intrusive federal election laws do not necessarily have the anticipated or promised effect.

The National Voter Registration Act was adopted to improve voter participation, which is, on its face, a measure of the legitimacy of government. We have relied on figures from Dr. Michael P. McDonald of George Mason University and the Federal Election Commission. We have started with Voting Eligible Population (VEP) since 1980, when Dr. McDonald began using this statistic, and Voting Age Population (VAP), since 1974, when 18 year-olds became eligible to vote, with voter turnout numbers based on highest office rates (the only numbers consistently available from all states).

When we look at each mid-term election, starting in 1982 through 1995 when the NVRA took effect in most states - 1982, 1986, 1990 and 1994 - national voter turnout based on VEP averaged 39.9%. After the NVRA - 1998, 2002, 2006, and 2010 - national voter turnout based on VEP averaged 39.7%. If you rely on VAP since 1972, when 18 year-olds were first allowed to vote, national voter turnout averaged 37.8 % through 1995, when the NVRA was adopted. After 1995, national voter turnout based on VAP declined to 36.7%.

For presidential elections, our numbers indicate that starting in 1980, when Dr. McDonald first began tracking the VEP statistic, through 1995, when the NVRA took effect in most states - 1980, 1984, 1988, and 1992 - national voter turnout in presidential election years based on VEP averaged 55.1%. After the NVRA became effective - 1996, 2000, 2004, and 2008 - national voter turnout based on VEP was 56.9%. If you rely on VAP since 1972, when 18 year-olds were first allowed to vote, national voter turnout in presidential election years averaged 53.3% through 1995. After the NVRA was adopted, national voter turnout based on VAP declined to 52.6%.

One can argue that VEP is a better measure than VAP because of immigration or prison populations, although VEP was not tracked as long as VAP. Still, the NVRA effect on turnout in midterm elections, if it had one, seems to be a decline, while the NVRA effect on turnout in presidential election years may be a small increase.

It is my experience that the States, through experimentation and experience, can be more effective at achieving high turnout without risking voter fraud or undermining the credibility of elections. Note that New Hampshire, while exempt from the NVRA, has consistently achieved among the highest voter participation rates in the country.

Had New Hampshire been obligated to comply with the NVRA, I doubt that our state's participation rates would have matched what they are today. I believe States should continue to serve as independent laboratories of change with less intervention by the federal government.

I strongly believe we can and should learn a lot from our past experiences, such as the evolution of regulatory power at the FEC, the aggressive efforts of the EAC to expand their authority beyond HAVA, the quiet effectiveness of NIST, and the lack of the NVRA in achieving higher turnout. These are things we should bear in mind as we proceed and as H.R. 672 evolves. Thank you for this opportunity to speak in favor of this bill.

Bill Gardner is New Hampshire's secretary of state and by state law required to set the date for the presidential primary every four years. First elected in 1976, he is serving his eighteenth consecutive two-year term. He was elected three times to the N.H. House of Representatives (72, 74, 76) and is a past president of the National Association of Secretaries of State. He has an undergraduate degree from UNH and graduate degrees from UNC-G and Harvard.

With the late former governor Hugh Gregg, he co-authored "*Why New Hampshire: The First in the Nation Primary State*" in 2003. Other published books, edited or co-edited, include "*Towns Against Tyranny: Hillsborough County New Hampshire During the American Revolution 1775-1783*" in 1976; "*New Hampshire: The State that made us a Nation*" in 1989 and "*Pillars of Public Service: One Hundred Years of the National Association of Secretaries of State 1904-2004*" in 2004.

April 12, 2011

Mr. HARPER. I now ask unanimous consent to enter into the record the letters and NASS resolutions mentioned by Secretary Gardner in his testimony. Without objection, so ordered.
[The information follows:]



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20003

OFFICE OF THE CHAIRMAN

June 25, 2004

Dr. Condoleezza Rice
Assistant to the President
For National Security Affairs
White House
Washington, D.C

Dear Dr. Rice:

On September 11, 2001, the State of New York not only experienced the worst attack of its history but it also experienced an unprecedented disruption of an Election Day. Information that describes the events of that horrific day reveal that one of the critical decisions that had to be made concerned the status of the election process. Many people believe that there was not explicit legal authority to cancel an election while it was in progress. The Governor and the State Board of Elections concluded that the election had to be suspended and a new election was scheduled to occur on September 25, 2001.

As the Chairman of the U.S. Election Assistance Commission (EAC) I am involved in assisting 8,000 local election officials prepare for the November 2, 2004, Federal election. Unlike New York, the Federal government has no agency that has the statutory authority to cancel and re-schedule a federal election. As you are aware the date for the Presidential election is established by the Constitution.

I am certain that you are preparing for all contingency needs in light of the security issues related to our November election. I have two concerns. First, if decisions have been made that establish a protocol and procedure in response to an attack on November 2, 2004, then the EAC should be involved in critiquing and conveying the message to election administrators. If a decision has not been made, then the EAC should be involved in the process of making such decision.

My second concern relates to enhanced security on November 2, 2004. Conventional wisdom can easily foresee the need for targeted security enhancement on Election Day. One need only consider the incidents in Spain earlier this year and the attempts to impact the national election with acts of terror. My concern is that certain efforts to enhance security against terrorism could inadvertently be perceived as voter intimidation if not handled very sensitively and effectively. Again, the EAC would like to participate in discussions that must already be occurring as we consider options to address this critical concern.

Dr. Rice, my letter of April 19, 2004, generally introduced our Commission to you and our interest in Homeland Security issues and voting in America. My hope was to meet with you to seek any specific concerns rather than to put them in writing. However, your office has informed me that you would not meet with me. Therefore, I have had to express these highly sensitive thoughts in writing.

Thank you for your consideration.

Sincerely yours,



DeForest B. Soaries, Jr.
Chairman



OFFICE OF THE CHAIRMAN

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW - Suite 1100
Washington, DC 20005

April 19, 2004

Secretary Tom Ridge
United States Office of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

Dear Secretary Ridge:

The U. S. Election Assistance Commission (EAC) is preparing to offer guidance to state and local elections officials on issues that relate to the November federal election. We are aware that there is growing concern about the potential for the disruption of our election by terrorist threats or activity. Although there may be comprehensive analysis and planning being done by the appropriate law enforcement agencies, I believe there is also a need to involve elections officials in the planning for the implications of such a threat.

The EAC regularly communicates with the nation's seven thousand state and local elections officials concerning an array of elections administration issues ranging from their appropriate use of \$2.3 billion dollars of federal funds to the reliability of electronic voting devices. We are interested in exploring ways to take advantage of our access to and relationship with these officials to enhance efforts that relate to securing the safety of our November federal election.

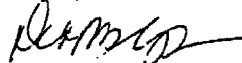
You may be aware that the General Accounting Office has been asked by Congress to investigate our level of security preparedness for our federal election. When they met with EAC commissioners in February, we informed them that the EAC was too new to provide them with answers to the questions they had prepared. However, we did commit to work with them in their mission to understand the issue and to inform Congress about their findings. We have not heard any more from GAO.

I believe it is important that the EAC collaborates with your office and participates in the federal process that will address this urgent issue. Because we serve as the only federal resource for elections officials and a national clearing house for elections information, we have a unique potential to facilitate and support an integrated approach that involves the managers of elections and prepare contingencies that meet federal standards and insure election integrity.

I look forward assisting you in your efforts to keep America secure and to make the world a place where freedom prospers. The core of that mission exists in our nation's ability to conduct elections that are neither compromised nor impaired by either threats or acts of violence.

I will contact your office to arrange a meeting at your earliest convenience.

Sincerely,



DeForest B. Soaries, Jr.
Chairman



Open Letter to the United States Election Assistance Commission

July 20, 2004

Dear Chairman Soaries, Vice Chair Hillman and Commissioners Martinez and DiGregorio:

We write to you in response to recent statements attributed to the Election Assistance Commission (EAC) regarding the administering of elections in the event of a terrorist attack. As election officials, we acknowledge our responsibility to conduct elections fairly, encourage voters to participate and continue to safeguard our polling places. Although we welcome the EAC's recommendations for implementing the election reforms mandated by The Help America Vote Act of 2002, we recognize that the EAC does not have rulemaking authority in this or any area of election reform. We need and encourage the EAC to focus on the duties for which it has responsibility, and thereby help us meet the needs of our citizens and states.

The Help America Vote Act of 2002 (HAVA) establishes the EAC as a "resource for compilation of information and review of procedures with respect to the administration of Federal elections..." HAVA charges the EAC with carrying out duties related to:

- Adoption of voluntary voting system guidelines
- The testing, certification, decertification and recertification of voting system hardware and software
- Conducting studies to promote the effective administration of Federal elections
- Distributing requirements payments
- Adoption of voluntary guidance
- Developing and executing the Help America Vote College Program

We support HAVA with the utmost conviction, and encourage the EAC to follow the true letter of the law and serve as an independent, advisory entity. We eagerly anticipate the completion of the numerous election administration issue studies for which the EAC has responsibility. We also await promised updates to existing voting systems standards.

The Secretaries and members of NASS are confident that the EAC can best serve the elections community and the American electorate in its intended advisory role. We look forward to working as a team with the EAC to sort through these issues. It is to that end that we have enclosed a NASS statement that outlines the responsibilities of chief state election officials and the EAC in implementing election reforms.

Sincerely,

The National Association of Secretaries of State

The Honorable DeForest Soaries
 The Honorable Gracia Hillman
 The Honorable Ray Martinez
 The Honorable Paul DiGregorio
 United States Election Assistance Commission
 Washington, D.C.

###



For Immediate Release
 Meredith B. Imwalle
 Director of Communications
 202.624.3528
 nass@sso.org
 July 20, 2004

Statement on Administration of Elections

Prepared by the National Association of Secretaries of State at the 2004 NASS Summer Conference

The administration and conduct of elections in the United States is chiefly the responsibility of state and county election officials. The federal government, specifically the Election Assistance Commission, can best guide the process by serving its intended advisory role and ensuring full funding of federal election reform mandates.

Today, the National Association of Secretaries of State sent an open letter to the Election Assistance Commission (EAC) to remind its commissioners of their duties as outlined in The Help America Vote Act of 2002, the law that created the EAC. In order for election reforms to be successful, states and the federal government must not lose sight of their respective election administration responsibilities.

Chief state election officials agree to accomplish the following:

- Protect every citizen's right to register to vote and cast a ballot
- Modernize the voting process as necessary, including updating voting systems and equipment
- Implement consistent standards for what counts as a vote throughout the election process
- Adopt uniform state standards for recounts and contested elections
- Conduct aggressive voter education campaigns
- Expand poll worker recruitment and training programs and provide ongoing training to election officials
- Maintain accurate voter registration rolls
- Enhance the integrity and timeliness of absentee ballot procedures
- Adopt the voluntary federal voting system guidelines

The following are the EAC's duties as defined by The Help America Vote Act:

- Adopt voluntary voting system guidelines
- Complete the testing, certification, decertification and recertification of voting system hardware and software
- Conduct studies to promote the effective administration of federal elections
- Distribute requirements payments
- Work toward the adoption of voluntary guidance
- Develop and execute the Help America Vote College Program

The United States is the world's model for democracy, and must set an exemplary example by conducting free and fair elections this November second and every election year. Our nation has fought in more than ten wars, including one on our own soil, and has never postponed an election. The Secretaries of State are absolutely committed to holding our national elections as scheduled this election year.

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For Immediate Release
Meredith B. Imwalle
Director of Communications
202.624.3525 office
mimwalle@sso.org
February 6, 2005

NASS Position on Funding and Authorization of the U.S. Election Assistance Commission

Dear Members of Congress:

The secretaries of state voted at the 2005 National Association of Secretaries of State winter conference to dissolve the U.S. Election Assistance Commission after the 2006 federal general election. The following position statement was passed by a majority of the secretaries in attendance:

Recognizing the U.S. Election Assistance Commission's (EAC) task as a limited one, Congress, in the Help America Vote Act of 2002 (HAVA), wisely authorized the EAC for only three years. Any duties assigned to the EAC can be completed by the National Institute of Standards and Technology or by the state and local election officials who make up the HAVA Standards Board and its Executive Committee. The National Association of Secretaries of State encourages Congress not to reauthorize or fund the EAC after the conclusion of the 2006 federal general election, and not to give rulemaking authority to the EAC.

The secretaries believe that allowing the EAC to evolve into a regulatory body is contrary to the spirit of HAVA, and that by 2006 the EAC will have served its purpose. Congress should preserve the states' ability to serve as independent laboratories of change through successful experiments and innovation in election reform.

Sincerely,

The National Association of Secretaries of State

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For Immediate Release
Communications Office
202.624.3525 office
February 6, 2005

NASS Position on Funding and Authorization of the U.S. Election Assistance Commission

Dear Members of Congress:

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The following position statement was passed by a majority of the secretaries in attendance: ***Recognizing the U.S. Election Assistance Commission's (EAC) task as a limited one, Congress, in the Help America Vote Act of 2002 (HAVA), wisely authorized the EAC for only three years. Any duties assigned to the EAC can be completed by the National Institute of Standards and Technology or by the state and local election officials who make up the HAVA Standards Board and its Executive Committee. The National Association of Secretaries of State encourages Congress not to reauthorize or fund the EAC after the conclusion of the 2006 federal general election, and not to give rulemaking authority to the EAC.***

The secretaries believe that allowing the EAC to evolve into a regulatory body is contrary to the spirit of HAVA, and that by 2006 the EAC will have served its purpose. Congress should preserve the states' ability to serve as independent laboratories of change through successful experiments and innovation in election reform.

Sincerely,

The National Association of Secretaries of State

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NASS Approach to Federal Legislation
Approved February 11, 2007

The nation's Secretaries of State believe that our federal and state governments must work in cooperation to serve the citizens of the United States. To facilitate the appropriate balance for an equal and effective partnership, the National Association of Secretaries of State (NASS) urges federal officials to adhere to the following guidelines when developing laws and regulations:

1. Members of Congress should respect our country's legal and historical distinctions in federal and state sovereignty and avoid preemptions of state authority when drafting federal legislation.
2. Federal legislation should include a reasonable timeframe for implementing state requirements or programs.
3. Federal legislation that affects the office and duties of the Secretaries of State should be drafted with input from NASS or a representative sample of the Secretaries of State who would be impacted by the bill.
4. Federal legislation that mandates changes to state laws or regulations should include full funding to support those changes.
5. Federal legislation should not curtail state innovation and authority solely for the sake of creating uniform methods among the states; all legislation should grant states maximum flexibility in determining methodologies for properly and effectively carrying out the duties of Secretaries of State, including the protection of voting rights.

Hall of States, 444 N. Capitol Street, N.W., Suite 401, Washington, DC 20001
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www.nass.org



NASS Resolution on U.S. Election Assistance Commission Interpretation of Maintenance of Effort (MOE) Requirements for State Governments

WHEREAS, the "Help America Vote Act of 2002" (HAVA) requires "States" which receive HAVA money to comply with "maintenance of effort" (MOE) requirements by identifying expenditure levels prior to the passage of HAVA and maintaining those expenditures on an annual basis after the receipt of HAVA money; and

WHEREAS, the U.S. Election Assistance Commission (EAC) has interpreted HAVA to require certain local units of government to comply with "maintenance of effort" requirements; and

WHEREAS, the Help America Vote Act of 2002 includes the following language:

1. 42 U.S.C. 15329 (P.L. 107-252, Section 209): "The (Election Assistance) commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-7(a))."
2. 42 U.S.C. 15403. (P.L. 107-252, Section 253(c)). "(c) The specific choices on the methods of complying with the elements of a State plan shall be left to the discretion of the states."
3. 42 U.S.C. 15485. (P.L. 107-252, Section 305): "The specific choices on the methods of complying with the requirements of this title (HAVA, Title III) shall be left to the discretion of the states."
4. 42 U.S.C. 15541 (P.L. 107-252, Section 901): "In this Act, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands."

WHEREAS, local "maintenance of effort" is not mentioned in HAVA, nor was it part of any training or instruction given to state or local election officials in preparation for implementing HAVA; and

WHEREAS, EAC guidance issued on September 6, 2007, interpreting the MOE as including local government expenditures is currently suspended while efforts within the EAC to clarify that MOE does not apply to local units of government are ongoing;

THEREFORE, NOW BE IT RESOLVED THAT the National Association of Secretaries of State (NASS) encourages the U.S. Election Assistance Commission to revise its MOE policy to ensure that it is consistent with HAVA's policy that local government expenditures are not included in any calculation of the MOE and to continue its suspension of the enforcement of a MOE requirement on local units of government until such time as a new policy is adopted; and

BE IT FURTHER RESOLVED THAT any EAC revision in policy designed to reflect such matters should also be consistent with the plain meaning of the "Help America Vote Act of 2002."

Expires: Summer 2013

ADOPTED the 28th day of July
in Grand Rapids, MI



NASS Resolution on Help America Vote Act of 2002 (HAVA) Grant and Payment Distinction
Approved July 19, 2009

WHEREAS, the Help America Vote Act of 2002 (“HAVA”) established the Election Assistance Commission (EAC) to assist in the administration of federal elections and charged the EAC with distributing payments to states under its authorized funding programs (Pub. L. No. 107-252, 116 Stat. 1666 (Oct. 29, 2002); 42 U.S.C. sections 15301-15545. See HAVA Sections 101, 251 and 261); and

WHEREAS, the Help America Vote Act of 2002 (“HAVA”) also charged the EAC with distributing grants to other entities under its authorized funding programs (See HAVA Sections 271 and 295); and

WHEREAS, HAVA authorizes the EAC in making a grant or payment to audit or examine the recipient of such a grant or payment made under HAVA, and in so doing makes an express categorical distinction between “grant” and “payment” (See HAVA Section 902); and

WHEREAS, in conducting audits of grants and payments, the EAC has no rule-making authority, and therefore, in performing its functions must act in accordance with the express statutory provisions of HAVA (See HAVA Section 209); and

WHEREAS, in enacting HAVA, Congress expressly used the terms “payments” and “requirements payments” in Sections 101, 251, and 261 of the Act; and

WHEREAS, Congress also used the terms “grants” and authorized the EAC to award “grants” in Sections 271 and 295 of the Act; and

WHEREAS, Congress does not interchange the use of the term “payments” and/or “requirements payments” in Section 101, 251, and 261, with the use of the term “grant” in Sections 271 and 295; and

NOW THEREFORE BE IT RESOLVED that the National Association of Secretaries of State finds that:

1. Under HAVA, a “payment” is not a “grant,” and a “grant” is not a “payment;” and
2. In effectuating its duties under HAVA, the EAC should create an accurate administrative record by using the term “payment” when the federal law means “payment”, and it should use the term “grant” when the federal law means “grant.”

Adopted the 19th day of July 2009
in Minneapolis, MN

EXPIRES: Summer 2014



NASS Position on Funding and Authorization of the U.S. Election Assistance Commission

Adopted on February 6, 2005
Extended Until the 2010 Summer Conference on February 1, 2010
Renewed at the 2010 Summer Conference on July 20, 2010

Dear Members of Congress:

The secretaries of state voted at the 2005 National Association of Secretaries of State winter conference to dissolve the U.S. Election Assistance Commission after the 2006 federal general election. The following position statement was passed by a majority of the secretaries in attendance:

Recognizing the U.S. Election Assistance Commission's (EAC) task as a limited one, Congress, in the Help America Vote Act of 2002 (HAVA), wisely authorized the EAC for only three years. Any duties assigned to the EAC can be completed by the National Institute of Standards and Technology or by the state and local election officials who make up the HAVA Standards Board and its Executive Committee. The National Association of Secretaries of State encourages Congress not to reauthorize or fund the EAC after the conclusion of the 2006 federal general election, and not to give rulemaking authority to the EAC.

The secretaries believe that allowing the EAC to evolve into a regulatory body is contrary to the spirit of HAVA, and that by 2006 the EAC will have served its purpose. Congress should preserve the states' ability to serve as independent laboratories of change through successful experiments and innovation in election reform.

Sincerely,

The National Association of Secretaries of State

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Expires at the Summer Conference 2015

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Phone (202) 624-3525 Fax (202) 624.3527
www.nass.org

Mr. HARPER. I will now recognize Secretary Hosemann for your testimony for 5 minutes, and welcome.

STATEMENT OF DELBERT HOSEMANN

Mr. HOSEMANN. Thank you. Thank you, Congressman Harper. Good to see you. You are missed at home. Apparently the adage of the State of New Hampshire, Don't Tread on Me, still applies to Bill.

In light of the budget issues and the international conflicts and national debt ceilings that we have got here that you all are all facing and the country is facing, election issues seem to be less important. However, as everyone who charts this country's path comes through the electoral process, we believe it is very important what you are doing today.

I have given you my comments in writing, and I will just summarize those quickly. Obviously, under HAVA we have had an explosion of scrutiny of increased types of voting systems. But the key to HAVA, of course, was to give Federal funding to elections, to develop standards in election administration, and the systematic collection of data. That is what we were about when you started this.

In this environment the EAC was created. It placed—this was the genesis, and Congress in its wisdom in 2002 gave it only a 3-year life. It was not appointed perpetually.

My colleagues at NASS, as Congressman Rokita has already pointed out, have voted time and again to abolish the EAC. Those votes were, as he mentioned, bipartisan and, in fact, 22 to 3 with 3 abstentions the last time it came up. Frankly, Mr. Chairman, this is a time which has come and a time now that is overdue.

As a threshold matter I would want explain to the committee that we could not have implemented the Federal standards without the assistance of some \$35 million to the State of Mississippi. Those were the HAVA grants, and we hope that we have used them, and we believe we have used them, in accordance with HAVA's mandates. However, EAC's role, as I agree with the majority of my NASS colleagues, EAC has become redundant as we move forward in the enforcement of HAVA. Many of their functions or all their functions can now be utilized by other organizations. And I have read the statutory language that you have drafted.

There is nothing in the administrative functions of EAC which cannot be performed by another entity. The funding, the standards, the data collection are all things that can be done from others. My colleagues here from Florida and New Hampshire are here with me today. We share this information that is gathered under HAVA, and it is very helpful in creating solutions to the electoral process.

I am not opposed to reporting for the reasons mentioned. EAC could be more efficient, and I have outlined those in my comments. The secretary of state of Mississippi has no statutory authority to require counties to provide the requested data of the EAC, although we get the initial contacts for each of them.

The lack of information that is reported from the counties, it is very hard to prepare this 58-page document and get it back on time. Standardization of the reporting data is very important as a step going forward, although we don't believe that the EAC is the

one to do that. We believe FVAP and DOJ, the Department of Justice, can both do this as well as the FEC.

I read with some interest the involvement in military and overseas voting. Of five secretaries of state that went to Afghanistan and Iraq to promote votes for the Presidential election, three of them are sitting here today. We got really good information. We learned a great deal of respect for the members of our military and how the voting was going to be conducted. I know firsthand what secure Internet-based access is.

However, the EAC has come in with two grants to research technology for injured members of the military and also create guidelines for the design of remote electronic voting systems. Those could be handled by FVAP or by the FEC.

One area of standardization I mentioned in here in regards to reporting requirements. They have changed over the years, and we have had reports—the ones where we follow the prior year's reports, we have had those rejected and had to refile them. Under the EAC guidelines, they have moved around.

I want to say, Mr. Chairman, that from my experience, in all due respect to Congressman Hoyer's statements before, this issue is not about the continuing of enforcement of HAVA. We all support that. The secretaries of state have repeatedly supported that.

We are the ones that train the elections officials at the local level, as you well know. We educate election commissioners, and we maintain the systems, and we assure disability access, and educate the voters. All of the things that were required in HAVA when we started are done by the secretaries of state in the local reporting agencies. It is not about HAVA here; it is about the fact that the EAC's responsibilities can be better utilized in other locations, and the government can function better.

All of the issues that I have raised today we raise on behalf of all of the secretaries of state, although I do not mention—I am not speaking for NASS today.

I do think it is critically important that we continue the three functions of HAVA that I have mentioned to you, the data collection, the standardization, and hopefully the funding. All of those, though, can be better served by another agency, and this one has become redundant and expensive.

Thank you for allowing me to come today.

[The statement of Mr. Hosemann follows:]

**Remarks of Mississippi Secretary of State Delbert Hosemann
To the Subcommittee on Elections of the Committee on House Administration
United States House of Representatives
Washington, D.C.
Thursday, April 14, 2011**

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE ON ELECTIONS
AND FELLOW PANELISTS:

I appreciate having the opportunity to address you on this most important issue. As you well know, passage of the Help America Vote Act, or HAVA, resulted in an explosion of interest in elections administration on both the state and federal levels. Scrutiny was increased on the types and quality of voting systems being utilized by elections officials on the local level. The main goal of HAVA is a system of elections that is more accurate, transparent and consequently fair. The confidence of the American people in the electoral process required no less. The means to achieve that goal were increased federal funding for elections systems, the development of standards in elections administration, and the systematic collection of data and best practices from around the country. This information has been beneficial to all of those who administer elections.

It was in this environment the Election Assistance Commission was created and into which it was placed. Prior to its genesis in HAVA, there was no single entity to address these issues. Further, there was no mechanism for the distribution of the considerable funds made available by Congress to the states for upgrading or improving their elections systems. In 2002, the EAC had an important role to play. Congress determined this role was not perpetual in nature (it was authorized for only three (3) years). Congress recognized its role would be fulfilled in that period. My colleagues in the National Association of Secretaries of State urged in 2005, and again in 2010, that the time had come for a realignment of the duties and responsibilities of the EAC to other entities, and a return of the direction of innovation to the states. Frankly, Mr. Chairman, this idea is now overdue.

As a threshold matter, let me say my State, and, indeed, most others, would have been unable to implement the sweeping changes in electoral systems technology that have taken place since 2002 without the funding made available by Congress for this purpose. Federal funding of elections process reform has been critical to our ability to move this process into the 21st century. I know from personal experience without the nearly \$35 million provided to my State through HAVA, this legislation's requirements would have been impossible to execute. I am aware no HAVA-related funding has been appropriated for the next fiscal year. I would

urge continued federal support for HAVA's mandates, as they are critical to maintaining the standards already in place regarding elections-related technology. I cannot stress this enough.

However, to return to EAC's role in this process, I agree with the vast majority of my NASS colleagues--the EAC has become redundant as we move forward. Indeed, with federal funding for HAVA severely limited or concluded altogether, and with agencies such as NIST and the FEC capable of performing the few remaining tasks assigned to the EAC, the rationale for its continued existence in its present form becomes unsupportable.

There is nothing in the original administrative functions of the EAC which cannot be performed by another entity. I fully support the process of accumulating data from the states. I know how beneficial it can be to have a central clearinghouse for "best practices" which can be maintained and utilized for the benefit of improving elections in general. My colleagues from Florida and New Hampshire, who are with me today, are accomplishing many of the same electoral tasks as Mississippi. Sharing information and solutions are an integral part of improving the process. However, this is not a function which must be unique to the EAC -- and it should not be a reason for continuing to fund an agency. As EAC's mandated responsibilities have diminished, their budget has grown. This is simply not good government, good policy or good management of the taxpayer dollar. I support the continuation of data collection and dissemination. However, this effort should be part of the ongoing program within another entity, such as the FEC.

While I am not opposed to reporting for the reasons mentioned, the biennial reporting required by the EAC could be made more efficient. In states like Mississippi, where the elections are conducted, and consequently, the elections data is created at the local and county level, accumulating the complex data required has proven onerous. Further, the Secretary of State has no statutory authority to require counties to provide the requested data. This can result in the reporting of incomplete data to the EAC, which, when reported to other governmental agencies and advocacy groups, can lead to erroneous conclusions regarding the effectiveness of a state's election management system. The lack of complete information can lead to unnecessary and expensive litigation. Simplification of the data collection, as well as standardization of the data sought from year to year, would enable states to more effectively configure their systems to capture data. Once accomplished, reporting data becomes routine. Currently, identical data is often sent to multiple agencies, like the EAC, FVAP and DOJ.

I read with interest the EAC's involvement in military and overseas voting. Mr. Chairman, military and overseas voting is of vital interest to me personally and my

State. Having had the privilege of traveling with the Federal Voting Assistance Project (FVAP) to Iraq and Afghanistan, I have seen firsthand the necessity of making simple, secure internet-based access to voting available to our military men and women. What I cannot comprehend, however, is why this cannot be administered through FVAP, which is configured for this task. Currently, EAC manages two grants to research technology for injured members of the military and created guidelines for the design of a remote electronic voting system. These should be accomplished by FVAP.

While Mississippi law does not require our voting systems to meet EAC certification standards, I am aware from listening to my colleagues across the country the process of establishing certification guidelines has not gone smoothly. Prior to HAVA, the FEC was charged with this duty.

One area of standardization which has impacted my State has been the EAC's seeming inability to determine and communicate what is required for, and how to complete, yearly financial reports. For example, one year the interest earned was reported as part of the Federal Share and the next year it was to be classified as Program Income. In addition, the reporting date range (calendar year to federal fiscal year) and due dates were moving targets from one year to the next. As a result of the EAC's inability to settle itself on a proper methodology for reporting expenditure of HAVA-related funds, we have had reports rejected when we followed the previous year's instructions.

Mr. Chairman, at least from my experience, the issue has not been the difficulty of working with EAC. In fact, we have had limited necessity to work with them. It is a matter of determining how best to move forward in the continued implementation of HAVA, and whether or not the EAC's responsibilities can better be administered by another agency of government, as envisioned by Congress. I believe it can. The time and effort the states invest in working with yet another arm of the federal government can be best utilized in working within its borders and in cooperation with our fellow states and reporting to a central, effective federal agency.

Delbert Hosemann

Mississippi Secretary of State

Elected in November 2007, the Honorable Delbert Hosemann serves as Mississippi's eighth Secretary of State since 1900.

Secretary Hosemann is committed to serving the public with open and fair government. In the short time since he was elected, he has worked tirelessly to ensure the integrity of Mississippi's vote, ethically manage state lands to guarantee the future for our children, and make our State more business-friendly and attractive for economic development.

Secretary Hosemann has long served the citizens of the State of Mississippi. Delbert was Chairman of the Board of Mississippi Blood Services and Treasurer of the Jackson Medical Mall Association and served on the Board of Directors for Jackson State University Development Foundation. He was a Paul Harris Fellow and is a member of the North Jackson Rotary Club. Some of his accolades include the George L. Phillips Community Service Award from the US Department of Justice in appreciation for his distinguished service as Chairman of Project Safe Neighborhoods, and for his efforts in the Hurricane Katrina First Responder Assistance Project. Delbert was also awarded the J. Tate Thigpen Award for exemplary leadership, support, and commitment to the American Red Cross.

In his spare time, Secretary Hosemann is an avid hunter and marathoner. He belongs to the National Rifle Association, Delta Wildlife Foundation, Ducks Unlimited, and the Mississippi Wildlife Federation. He has completed both the New York Marathon and the Boston Marathon and represented Mississippi in the Senior Olympics.

Raised in Warren County, Mississippi, Secretary Hosemann comes to the position with a background in Business and Taxation Law. He has his undergraduate degree in Business from Notre Dame, a law degree from Ole Miss, and a Masters of Laws in Taxation from New York University. He is a former partner of Phelps Dunbar, LLP and was selected to the Best Lawyers in America for 18 consecutive years. Secretary Hosemann also served his country in the United States Army Reserves.

Delbert has been married to his wife, Lynn, for 40 years. They are extremely proud of their three children: Kristen, Chad, and Mark; and granddaughters Grace, Nora Lynn, Carson.

Mr. HARPER. Thank you, Secretary Hosemann. Appreciate your being here and your friendship and your dedication to our great State of Mississippi.

I now recognize Secretary Browning for 5 minutes. You may proceed.

STATEMENT OF KURT BROWNING

Mr. BROWNING. Thank you, Mr. Chairman and members of the committee, for the opportunity to be here today to provide testimony for H.R. 672. Today I speak in support of this legislation, and, as you know, elections administration has always been a responsibility of the States. With the passage of the National Voter Registration Act of 1993, I believe the Federal Government took its first major step into their involvement in the conduct of elections. Certainly after the 2000 general election that has been frequently mentioned today, Congress passed the Help America Vote Act of 2002 that I believe went even further into the administration of elections, and under that act created the Elections Assistance Commission and provided much-needed funding to the States for modernizing their voter registration systems as well as their voting systems. And we continue to be appreciative certainly of that assistance.

The EAC was also tasked with administering, obviously, the number of grants to study various elections-related issues. The creation of the Election Assistance Commission was probably a good idea at the time, because it did provide a means of administering the requirements payments for the State, as well as providing some much-needed uniformity that was pretty much nonexistent among the States. It also had a limited life span.

It continues to operate today as a Federal agency that has grown both in staffing and in its budget. It appears to me to be an overlap of responsibilities between the EAC and other Federal agencies. As Secretary Hosemann has mentioned, some of the military initiatives that the EAC has involved themselves with is something that to me only makes sense that the Federal voting assistance program would be the logical home for some of those initiatives.

My experience with the EAC has been mixed at best. In my opinion, the EAC has outlived its usefulness. In 2007, I appeared before the EAC seeking guidance from the Commission regarding the use of Florida HAVA dollars that we still had on account for the purchase of voting systems when we were moving from touch-screen to optical-scan voting systems. After a great deal of testimony and questions, they, the Commission, were unable to provide any definitive answer to me for a very timely topic and in need of a very timely answer since my legislature was in session. It was only after discussion with the Commission's general counsel that an answer was provided, and then and only then was it a tentative answer.

A common criticism is the EAC's voting system certification, and that it has taken extended amounts of time to certify systems. It wasn't until recently that they certified their first system after having been in existence for as long as they have.

The other thing that is a concern is the continually changing voting system standards. No sooner is a set of standards adopted by the EAC before they are preparing a new round of standards. This

constant state of flux has cost the voting system's manufacturers millions of dollars, and in turn those costs are passed on to local and State governments. For that reason Florida chose not to require Federal voting system certification, but instead to rely on our own rigorous voting system certification program. In my opinion, we can certify a system faster and more accurately in Florida than the EAC.

As has been stated a number of times today, the National Association of Secretaries of State has, in fact, adopted a resolution in 2005 and again in 2010 calling on Congress not to reauthorize funding or—reauthorize the EAC or its funding, and I supported that resolution. I do, however, believe that they should have gone further by providing specific suggestions to you, the Congress, as to the disposition of the functions of the EAC.

The legislation today calls for the termination of EAC and reassignment of most of its responsibilities to the Federal Election Commission. I believe a more philosophical question that I believe needs to be asked and answered in light of this legislation is does the Federal Government need to continue administering a program intended to fix problems that are now 10 years old and have essentially been resolved? If the Federal Government is going to continue to be involved with voting system certification issues, I would recommend and certainly suggest that this be transferred to the Federal Election Commission and not the National Institute of Standards and Technology as currently proposed.

Certainly with the passage of this legislation, the Standards Board and the Advisory Board cease to exist. I believe there needs to be some formalized process that State stakeholders have in providing input to the body that is going to determine these voting system standards as well as other things would impact the administration of elections at the State level.

Certainly I am not an ardent supporter of Federal involvement in election administration, but I do believe that the issues that we are talking about today that are currently assigned to the Elections Assistance Commission could and should be assigned or reassigned to the Federal Election Commission, and I believe that it would be the best place to do it because of their continued relationship with the elections community.

I would be more than happy to answer any appropriate questions at the appropriate time. Thank you, Mr. Chairman.

Mr. HARPER. Thank you, Secretary Browning, for being here.

[The statement of Mr. Browning follows:]

HR 672 Testimony
Kurt S. Browning
Florida Secretary of State

Thank you, Mr. Chairman and members of the Committee, for the opportunity to provide testimony regarding HR672. I am Kurt Browning, Florida Secretary of State. I have served as Secretary since January, 2007 and prior to that, I served as the elected Supervisor of Elections for Pasco County, Florida for 26 years.

I speak today in support of HR672.

Elections administration has always been a responsibility managed at the state level. With the exception of provisions in the US Constitution detailing the structure of our federal government, each individual state determines the manner in which senators, representatives and local officials are elected.

With the passage of the National Voter Registration Act of 1993, the federal government took the first major step, in my opinion, in their involvement in the conduct of elections.

After the 2000 General Election, Congress passed the Help America Vote Act of 2002 that went further into the administration of elections. The Act created the Elections Assistance Commission and provided much needed funding to states for the purpose of upgrading and modernizing their voter registration and voting systems. We continue to be appreciative of this assistance. Additionally, the EAC was tasked with administering a number of grants to study various elections-related issues.

The creation of the Elections Assistance Commission was, at the time, a good idea because it provided a means of coordinating and disbursing the federal requirements payments to the States and it had a limited life span. However, although the EAC was authorized for three years, it continues to operate as a federal agency and has grown both in staffing and budget.

Because there appears to be an overlap of responsibilities in some of the functions of the EAC and other federal agencies, it is my opinion that there would not be a noticeable difference in the program outcomes if the EAC was abolished.

My experience with the EAC has been mixed at best. In my opinion, the EAC has outlived its purpose. In 2007, when seeking guidance from the Commission regarding the use of Florida HAVA dollars for the purchase of voting systems, after a great deal of testimony and questions, they were unable to provide a definitive answer. It was only after a discussion with the Commission's General Counsel that an answer was provided, and then, it was only tentatively.

A common criticism of the EAC's voting system certification program has been the extended time that it takes to certify a system, as well as, the continually changing voting system standards. No sooner is a set of standards adopted before the EAC is preparing a new round of standards. This constant state of flux has cost the voting systems manufacturers millions of dollars and, in turn, the states and local jurisdictions. For that reason, Florida chose not to require federal voting system certification, but to instead rely on our own rigorous voting system certification program. In my opinion, we can certify a system faster and more accurately in Florida than the EAC.

The National Association of Secretaries of State adopted a resolution in 2005 and again in 2010 calling on Congress not to reauthorize or fund the EAC. I supported that resolution. I do, however, believe that NASS should have gone further by providing specific suggestions to Congress as to the disposition of the functions of the EAC.

With the disbursement of the requirements payments complete, and with the required research concluded, now is the appropriate time to terminate the EAC.

HR672 calls for the termination of the EAC and the reassignment of most of its duties to the Federal Elections Commission. A more philosophical question that I believe needs to be asked and answered, in light of HR672, is, does the federal government need to continue administering a program intended to fix problems that are now 10 years old, and that are essentially resolved?

If the federal government is going to continue to be involved in voting system certification issues, I would respectfully request that all of the responsibilities outlined in HR672 be transferred to the FEC and not in part to the National Institute of Standards and Technology, as currently proposed. There is so much more involved in certifying a voting system than meeting a set of technical standards. I believe the FEC would be better suited to ensure a more robust certification program because of their long term relationship with the elections community.

With the passage of this legislation, the Standards Board and the Advisory Board cease to exist. Under the current scheme, these two boards are the only formal way for the elections community to have input into the decisions that affect the states and the manner in which they conduct their elections. That being said, I suggest that there continue to be some mechanism in place for the various state stakeholders to have meaningful input into the voting systems standards, as well as, other issues that affect the states.

While I am not an ardent supporter of federal involvement in the administration of elections, I do believe that, if continued, the activities currently assigned to the EAC could and should be transferred to the FEC to be more efficiently administered. Finally, I would caution that continued oversight of the FEC and its programs would be necessary to ensure that it continues to serve the elections community efficiently.

Once again, thank you for this time to speak with you today. I look forward to any questions you may have.

Secretary of State Kurt S. Browning

Secretary of State Kurt S. Browning was named Florida's Secretary of State by Governor Rick Scott in January 2011. He also served as Secretary of State under the previous administration from December of 2006 until April of 2010. Before coming to the Department of State, Secretary Browning spent 26 years serving as the Supervisor of Elections for Pasco County where he was involved in Florida's elections community through service as the President of the Florida State Association of Supervisors of Elections; as a member of Governor Jeb Bush's Task Force on Election Procedures, Standards and Technology; and as a member of the State Planning Committee for the Help America Vote Act.

Secretary Browning is a native Floridian, and received a bachelor's degree in Political Science and a master's degree in Public Administration from the University of South Florida. His extensive community involvement in Pasco County includes service as President of Downtown Dade City Main Street, Inc., and involvement with organizations including the Boy Scouts of America and the Pasco County United Way.

Mr. HARPER. And I now recognize Mrs. LaVine for 5 minutes. Thank you. You may proceed.

STATEMENT OF JILL LAVINE

Ms. LAVINE. Thank you. Good morning. Thank you for this opportunity to speak here at this committee and to give you the viewpoint of the local election official if the EAC was terminated.

In 2002, when the Help America Vote Act was being debated here in Washington, it was the topic of every election official. And I have to admit, I was on the concerned side. It was perceived that the Federal Government wanted control how the States and local elections conducted their elections. I changed my mind, however, when I saw what the EAC really did, that they were an Election Assistance Commission.

In 2005, Sacramento County rolled out our new voter assist terminals for voters with disabilities. This was the largest rollout in any State at that time. The EAC was there to help and observe, and their experience was very helpful. I have been able to participate in several of the EAC projects, and in preparing the Election Management Guidelines and the Quick Start Guide. The Commission would gather together a group of election officials. We would get together and discuss the topic. We were not told what to do or what we were supposed to say, but rather how did we make this work, and what were our differences, and what could we suggest to improve the process.

Since we represented different States, and worked under different laws, and used different voting systems, the finished products will help everyone.

The Election Management Guidelines should be in every election office. I use them when I write procedures, when looking for ways to save money, and when writing RFPs for new equipment. However, election laws change, and technology changes, and these guidelines need to be updated, and the new elections trends need to be vetted with election officials having those experiences.

There are two topics now that should be added: One, requiring identification to vote; and another would be on-line voter registration. I believe the EAC is the best organization to continue these projects. On the EAC Web site, it is one the best and most helpful clearinghouse spots for information for election officials from all States. I cochair the legislation committee in California, and as I prepare analysis of the bills to determine cost and impacts, I can do research on the EAC Web site and be able to make appropriate suggestions for amendments. I even used the Web site when I was asked by my county to prepare a contingency plan for the H1N1, or swine flu.

As cochair of the legislation committee, I put on a yearly workshop to discuss all the laws that had been passed the previous year and the impact on the local officials. The EAC has been very supportive of this workshop and, when available, will speak at this meeting to update what is happening on the Federal level. It is that interaction to show their support and we build trust together.

The authors of H.R. 672 recommend the termination of the EAC because they feel the job is done. HAVA has recommended—or one of the HAVA's requirements is that they have—every State have

a statewide voter registration database. California does not, and right now the expected implementation date is 2015.

Another requirement of HAVA is to improve voting systems. At this time Los Angeles County, the largest county, I think, in the Nation, is looking for a voting system. They are using their home-grown Inkavote system because there is not a system that will accommodate their needs. And California's passage of the Top Two Primary has increased their burden, and they will not be able to accommodate the number of candidates and contests for 2012.

I bought our optical scan system in 2004, and soon it will be at the end of its lifecycle. Many counties are in the same position. HAVA's requirement to improve voting systems will always be an ongoing job.

One fast food company used the saying, you don't notice clean until it is not there. Well, the same could be said for elections. No one pays any attention to an election official until something goes wrong. That is what happened in 2000. Election officials now are preparing for the Presidential 2012 elections. Now is not the time to terminate the EAC.

While the research projects first included in HAVA are complete, elections change, people change, voters change, technology changes, and the EAC also needs to be changed, but not terminated. Like all election offices facing budget cuts, we must look for new efficiencies. HAVA now requires three advisory boards for the EAC. I would suggest reviewing the need for all these members. I would recommend staffing all four Commissioners. There is no cost savings when decisions cannot be made to get the work done.

In conclusion, I would recommend a change, not a termination, of the EAC. Election officials rely on the guidance and the resources that the Election Assistance Commission provides.

Thank you.

Mr. HARPER. Thank you Ms. LaVine. Appreciate your attendance today.

[The statement of Ms. LaVine follows:]

**HOUSE ADMINISTRATION COMMITTEE HEARING ON
H.R. 672 - TO TERMINATE THE ELECTION ASSISTANCE
COMMISSION**

APRIL 14, 2011

TESTIMONY OF JILL LAVINE, REGISTRAR OF VOTERS

COUNTY OF SACRAMENTO, CALIFORNIA

Good morning Chairman Harper, Ranking Member Brady and Members of the Subcommittee. Thank you for this opportunity to speak today on HR 672 and the impact it would have on the local election official if the EAC was terminated.

My name is Jill LaVine. I am the Registrar of Voters for Sacramento County. I have held this position since 2003 and have worked in elections since 1987. I am on the EAC Advisory Board, and co-chair of California's election legislation committee. I started in elections as an election night "chad checker."

In 2002, when the Help America Vote Act was being debated here in Washington, and was the topic of discussion for every election official in the country, I will admit that I was on the concerned side. It was perceived that the federal government wanted to control how the states and the local election officials conducted elections. The federal government was offering money but the strings attached seemed so burdensome that I wondered if it was worth the trouble.

The Election Assistance Commission got off to a very rough start. There was no budget and no office space. The Commissioners' positions were not staffed until 2003, and have not been fully staffed through the years. Today we only have two commissioners, when there should be four. Even with all these obstacles, the EAC continued to put together an office and get to work on the mandates of HAVA.

I had to change my mind about the EAC when I saw what they were doing. It was not another federal bureaucracy that wanted control, but rather as their name says – Election Assistance.

HAVA requires all commissioners have experience with or expertise in election administration or the study of elections. The Commissioners are people with election experience that can help. They do understand the complexity of an election.

In 2005, Sacramento County rolled out our new Voter Assist Terminals, for voters with disabilities, the largest roll out in any state at that time. The EAC was there to help and observe. Their previous election experience was valuable to the success of this project.

I have been able to participate in several of the EAC projects and have seen how the process works. In preparing the Election Management Guidelines and the Quick Start Guides (http://www.eac.gov/election_management_resources/default.aspx), the Commission would gather a group of election officials representing several states and different voting systems to come together to discuss the topic. I was able to participate in the discussions on Absentee Voting and Vote by Mail, and Developing an Audit Trail. The Commission doesn't tell us what to do - they ask us what we do to make it work, and what we see as improvements to the process. Since we represent different states and work under different laws and voting system requirements, the finished products help everyone. I have always come away from these meetings learning more and able to take some of the ideas back to my office and improve my process. Election officials using these guides are able to benefit from these discussions also.

The Election Management Guidelines should be in every election office. I use them when writing procedures, when looking for ways to save money, and when writing RFPs for new equipment. These guidelines are practical, and since they have been written by election officials, I know that they will work.

However, since election laws and technology are always changing, these guidelines will need to be updated, and the new election trends need to be vetted with those officials having experience. I can think of two topics now that should be added: one, requiring identification to vote, and another would be on-line voter registration. I believe that the EAC is the best organization to continue this project.

The EAC website is the best clearinghouse for information for election officials from all states. I co-chair the legislation committee in California. Our legislators hear about a wonderful new way to increase turnout, or a better reporting method and introduce legislation. However, they have not taken into consideration what voting system we use, or what conflicting laws we may already have. As I prepare an analysis of the bill to determine the impact and costs, I can research the EAC website and find where another state or jurisdiction has already done this, or attempted to do this same proposal and make appropriate suggestions for amendments as necessary.

With the demand to do more with less, the EAC website is valuable in saving time researching and finding answers.

I used the website when I was asked by my county to prepare a contingency plan for the H1N1 or swine flu. I found that several jurisdictions had already prepared a plan, and I was able to modify theirs for use in my county.

As co-chair of the legislation committee, I also put on a yearly workshop for all state election officials to discuss the new laws that have been passed and the impact they will have on the counties. The EAC has been very supportive of this workshop, and when available will speak at this meeting to update the participants of what is happening on the federal level. It is this interaction with members of EAC that builds trust, and we know that our concerns are heard.

The authors of H.R. 672 recommend the termination of the EAC because they feel the job is done. HAVA requires states to develop a single, uniform, official, centralized, interactive

computerized statewide voter registration list defined, maintained, and administered at the State level. HAVA requires the statewide list be coordinated with other agency databases within the state.

California does not have a statewide registration database, and the expected date for implementation is now 2015. Who will be overseeing this implementation?

Another requirement of HAVA, to improve voting systems, is not done. The EAC is needed just as much now as in 2002. For example, at this time Los Angeles County is looking for a voting system. They are using their home grown Inkavote system because there is not a voting system available that will accommodate their needs and meet the California requirements. With the passage of new legislation, the Top Two Primary, there is concern the system they have will not be able to accommodate the number of candidates and contests for 2012.

I was able to use the grant money from HAVA to move from a punch card system to an optical scan system. I bought the system in 2004, and it will soon be at the end of its life cycle. Many counties are in this same position. EAC's requirement to improve voting systems has not ended, it will always be ongoing. The EAC's job is not complete.

One fast food company used the saying - you don't notice clean until it is not there - to encourage people to solicit their establishment. Well the same could be said about elections. No one pays any attention to the election officials until something goes wrong. That is what happened in 2000, that is why HAVA became law, and that is why we have the EAC. Election officials are now preparing for the Presidential 2012 elections - now is not the time to terminate the EAC.

While the research projects first included in HAVA are complete, I don't believe that is the end. Elections change, the way people vote change, and technology changes. There is still more work to do.

The EAC also needs to change, not be terminated. Like all election offices facing budget cuts, they must look for new efficiencies. HAVA now requires three advisory boards, a Standards Board consisting of 110 members, a Board of Advisory with 37 members, and a Technology Guidelines Development Committee with 15 members. While these members are not paid to participate, the correspondence, staffing and travel expenses of all these members take considerable time and money. I would suggest reviewing the need for all these members.

While in-person meetings are always the best, using video conferencing technology has saved our office travel money and still allows us to participate. I am sure that the EAC has looked at this as a cost savings.

I would recommend staffing all four Commissioners. There is no cost savings when decisions cannot be made to get the work done.

In conclusion, I would recommend a change - not a termination of the EAC. Election officials rely on the guidance and the resources the EAC provides.

**Jill LaVine
Registrar of Voters
County of Sacramento, California**

Jill LaVine is the Registrar of Voters for Sacramento County. She is responsible for the day to day operation of the Division of Voter Registration and Elections. She has worked in elections for over 24 years, and as the Registrar for almost eight years.

In addition to her election duties, Jill is also responsible for the redistricting of the Supervisorial boundaries following the 2010 Census. This task includes mapping and presentations to communities and the Sacramento Board of Supervisors.

Jill is the co-chair of the Legislation Committee for the state wide organization, California Association of Clerks and Election Officials (CACEO) and testifies at the State Capital. Jill also is the Chair of the Mother Lode Area for the CACEO.

On the national level, Jill is a member of the Election Center, an organization for Election Officials, and has made presentations at their conferences. The Election Center appointed Jill to chair the re-formed Postal Task Force. This committee, in conjunction with the Post Office, has updated the Election Official Guide, created a web-site for Election Officials and new mail tray tags specifically for mailing ballots.

Jill is also a member of the Postmaster General's Mailers' Technical Advisory Committee representing the interest of election officials nationally.

Jill has testified before Congress on the paper audit trail and at a public meeting of the Election Assistance Commission regarding the accessibility standards for voting systems.

Jill LaVine received her CERA (Certified Election and Registration Administrator) from the Election Center in 1996 and her Cal-PEAC (California Professional Election Administration Credential Program) in 2006. She also has a Total Quality Management Certificate (TQM).

Mr. HARPER. I now recognize Mr. Fortier for his testimony. You are recognized, sir. Thank you.

STATEMENT OF JOHN FORTIER

Mr. FORTIER. Thank you, Mr. Chairman, and thank you, members of the subcommittee, for having me here today. I appreciate testifying on this subject, and I guess I have something of a middle view.

I sympathize very much with the aim of the bill. There are a lot of reasons to think that we have a time of fiscal crisis, we should look at every line in the budget; that the EAC has a number of missions that it has completed and it is not going to be performing in the future; and finally, the questions about the EAC's management, and how much it spends on management, and how it allocates its resources. All of those point in the direction of doing something significant with the EAC.

I do have some, a couple of reservations that caused me not to go down the road of absolutely calling for the termination of the EAC. One is that, I think, the one function of the EAC that is partially preserved by the bill, partially preserved in the FEC with reports on UOCAVA and reports on NVRAs, the research function; the research function, the ability to collect and standardize data, which can be very different from State to State. Not only the reporting of the data is uneven, but different things are called different things in different States. So it is very difficult to find a sort of common data across States, and the EAC performs a valuable function in that area.

I guess I want to take you back to the time when Mr. Hoyer was sitting here at this table, was sitting where you are sitting, and we had the 2000 elections crisis, and it really was a time when Washington had to figure out how elections worked. There were secretaries of state, local elections officials well versed in these issues, but in many ways Washington wasn't, scholars weren't versed in these things. And we spent a couple of years in this committee and various private commissions around the country trying to get a real handle on how the whole system works. We had worked on it episodically here and there, but having a place that can look at the elections system as a whole and collect data, I think, is significant and important.

Two things I would highlight. One is that, yes, you preserve some of the research functions. But I do think that the Elections Administration Survey, which really is part of a larger survey that includes UOCAVA and NVRA, is valuable. The work that I have done on early and absentee voting, information about provisional ballots, about types of voting machines, just getting a sense of the landscape of where we are across this very, varied country, is something I think is worth preserving.

I do think a more robust research component in general than has been proposed by the bill would be worthwhile. Thinking about a State of Voting in America report coming out regularly that would be a Federal and independent voice of what was going on in the country would help policymakers here in Washington, policymakers in the States, and elections scholars as well.

The other concern I have is that elections administration issues might get lost. The FEC, of course, did have a responsibility for these matters before 2000. And we did come to the 2000 elections crisis and realize we didn't know enough about it here in Washington. And I worry that all of the resources of Washington knowing about elections will drain away if we don't treat this core responsibility of being able to describe the elections system well seriously.

The committee here may find itself not as interested in these issues if there is not an EAC. Scholars may not write as many reports. There already is some sense that foundations and others are pulling away from this area. So I think it is important to keep these issues in the forefront.

And I suggest a leaner, meaner EAC focused much more on research issues and making sure that we retain some of these core components. That might be a significantly smaller EAC than it is today, but certainly an important function. Or if you do need to move it to another place, to the FEC, I think the challenge here is to make sure that that part of the FEC has a voice. The FEC is a busy place, and Commissioners are concerned with other things, and getting Commissioners' time and getting a prominence to those issues, I think, is a challenge.

So I am supportive of the strong look at the FEC, the need to streamline, cut down many of the functions, but I do think we need to look much more significantly about preserving a strong research function and finding a place, whether it is a smaller independent agency or as a part of the FEC, to make sure that those issues are not lost in other issues.

Mr. HARPER. Mr. Fortier, we thank you for your testimony.

[The statement of Mr. Fortier follows:]

Testimony of John C. Fortier*

before the Subcommittee on Elections of the House Administration Committee

"H.R. 672 – To Terminate the Election Assistance Commission"

April 14, 2011

*John C. Fortier is a political scientist, who has been a research fellow at the American Enterprise Institute and principal contributor to the AEI-Brookings Election Reform Project. This week, Fortier is transitioning to a new position as the director of the Democracy Project at the Bipartisan Policy Center. The views expressed here are his own and not the official position of the American Enterprise Institute or the Bipartisan Policy Center.

Chairman Harper, Ranking Member Brady, and members of the Subcommittee,

Thank you for inviting me here to discuss the future of the Election Assistance Commission. You are to be commended in this time of fiscal peril for looking carefully at every line item in the federal budget. You are also right to make a serious accounting of the functions of the EAC and to make tough choices about whether these functions should be preserved, ended or redirected.

The EAC has a different set of missions today than it did when it was created by the Help America Vote Act. H.R. 672 recognizes the change in mission and while disbanding the EAC tries to preserve the core functions of the NVRA survey, the voting system testing and certification program, research for UOCAVA, and maintaining a clearinghouse of information on voting system guidelines.

I welcome all of this rethinking. The EAC needs a fresh look. But I will focus my testimony on two areas: (1) the need for preservation of a research function and in particular the Election Administration and Voting Survey, a biennial post election survey on election administration; (2) my concern that election administration issues can easily be lost sight of if they become part of a larger institution such as the Federal Election Commission and my recommendation that you consider preserving core functions within a leaner, meaner EAC. Or, as a fall back, if you choose not to retain an independent agency such as the EAC, you should beef up the authority and prominence of an election administration section within the FEC.

One way to consider the place of the EAC today is to remember how and why it was created.

In the aftermath of the controversy in Florida, this committee performed heroic work, assembling a parade of experts in election administration over the course of a year and a half and crafting a bipartisan compromise in the Help America Vote Act that did much to improve the state of election administration. The act is not perfect, but given how strong the passions were following the 2000 election, the accomplishment is remarkable.

With hindsight it is easy to forget how hard it was for this committee to gain a perspective on what was wrong with our election administration system and how to improve it. In a sense, the time from 2001 to 2003 was a period of time for Congress and this committee in particular to create a base of knowledge for policy makers to work from.

Election administration was ignored by many. Elections often go off without a hitch, and the running of an elections was seen as an obscure art practiced by narrowly specialized election officials. When Congress did address election issues, they were usually very specific, stand-alone issues such as voter registration. After the 2000 election controversy, Congress and this committee therefore had to re-educate itself even about the basic state of election administration in the states, who did what and how all of the pieces fit together.

And if Congress had to educate itself about the state of election administration, academia was not in any better position. The academic study of election administration was limited to a very few political scientists and legal scholars. Most of political science and law looked down upon people who studied these areas.

So from 2001 to 2003, Congress, a series of prominent private commissions, and scholars rediscovered election administration. We had a real debate about how our election system operates. We did not fix everything. In fact, we did not agree exactly on what needed fixing.

But both at the federal and state level, we have had informed debate that has changed the way we hold elections.

It is easy, however, to see that the momentum developed from the serious study of our election system has been lost. Foundations are less interested in funding research on election administration issues and scholars less interested in studying them. We are still well ahead of where we were in 2001 in terms of a broad understanding of the election system, but we have begun to slip back.

For this reason, I believe it is essential to retain a robust election administration research function. Whether the research is conducted directly by EAC staff or parts of it contracted out to outside researchers, it is important to have a dedicated in house research staff who know the issues and can continue to put out products such as the NVRA Survey, UOCAVA reports and the comprehensive Election Administration and Voting Survey and other reports.

Even if we were to adopt the current version of H.R. 672, some research staff would be necessary just to put out the NVRA survey and UOCAVA reports.

I hope you consider retaining the Election Administration and Voting Survey. This survey provides a broad view of how elections are being held across the states. It provides valuable information on the quantity of absentee and early voting, the number of provisional ballots cast and counted, the types of voting equipment used, etc.

And much of this information is very difficult to get given the fragmented nature of the way we run elections. Take for example the phenomenon of absentee and early voting, which I studied in *Absentee and Early Voting: Trends, Promises and Perils*.

States have different definitions of absentee voting. Some call absentee voting "early voting." Others call in person early voting "absentee voting." Some states have long periods of early in person voting; others have several periods of early voting, with different voting sites available during each period.

In addition to the definitional problems, election administration data is always well reported. In the beginning, the EAC's Election Administration and Voting Survey did not always overcome this difficulty, but it did significantly improve the rate at which states and localities report their data. It is an excellent starting point for researchers.

In my early research on absentee and early voting, I remember seeing blanks on the 2004 and 2006 EAC survey in the fields of how many absentee votes were cast in a particular state. When I called the state itself, I was told that they did not have statewide numbers of absentee ballots cast and that I would have to call each of the several hundred towns to get their individual results and then add them together to get a statewide total. The lack of proper data collection and sometimes the lack of will to report it were problems faced by the EAC survey.

But each election cycle, the survey has improved as experienced staff has become more familiar with the pitfalls of data collection and has developed contacts in state and local offices. The EAC has also become more aware of some of the definitional problems as to what is an absentee vote by mail and what was an in person early vote, and subsequent surveys improved on the earlier ones.

This institutional knowledge would be lost if the Election Administration and Voting Survey were cut.

And while the Election Administration and Voting Survey provides valuable information on its own, it also directly provides data for reports on UOCAVA voting and the NRVA survey. While it might be possible to disentangle the data collection on UOCAVA and NVRA from the election administration data, they are now interrelated, and eliminating the election administration survey might undermine the issuing of UOCAVA and NVRA reports.

Could the private sector take over this function? In certain aspects, yes. But private research organizations would have a much harder time than the EAC requiring states to standardize data or even report data at all. Private research will often piggyback on EAC collected data, not try to recreate the data collection of the EAC.

Two other points about research. First, the EAC in 2008 has issued its first biennial statutory overview report, which catalogues election laws on a number of topics in the states. This new survey also provides value for federal and state policy makers as well as private researchers.

Second, in addition to the several regular surveys mentioned above, there is the need for some additional research on specific topics. The committee is right to note that many of the reports envisioned by the Help America Vote Act have been undertaken. And it is worth considering how this type of specific issue report should best be conducted. But a simple point is that the field of election administration is changing, and there will be developments in the field, so there is a place for some new research reports. Some of these areas of study should be laid out Congress in law, but there should be at least a small capacity to conduct research in new areas.

2. Maintaining the Prominence of Election Administration Issues.

Recall again, how little everyone knew about election administration in 2001. A crisis drove our institutions to gather more information about elections. Without a crisis, the likelihood is that we will slip back to the days where only state and local election officials understand election administration.

For policy makers at the federal level, it is important to preserve needed information to edify the debate. At the state level, it helps our "laboratories of democracy" to be able to compare their systems to other states. And for scholars, the survey and other research provides the data for future research.

But there is a significant danger that these issues will be lost if election administration functions are moved to the FEC and then essentially forgotten as the FEC pursues its other activities relating to the financing of campaigns.

For this reason, my preference would be for a smaller and much more focused independent EAC that would engage in research, produce regular surveys, and maintain a knowledge base that would help federal and state office holders and scholars.

If, however, Congress does decide to move the remaining functions of the EAC into the FEC, then you should work to ensure that the section of the FEC dedicated to election administration is not dwarfed by other concerns. It is hard to know how to accomplish this task, as election administration issues will need the time and attention of FEC commissioners, and they already have a very full plate of issues.

Some may say that because the FEC once housed election administration functions that there will be little problem returning to the status quo. But the status quo in the year 2000 was one where Congress, state policy makers and researchers did not know enough about how elections were run. I urge you not to simply return to that status quo. Rethink the role of the EAC. Maintain a research capacity. Consider creating a smaller more focused independent EAC. Or if you decide to move the functions of election administration to the FEC, find a way to ensure that those issues are not lost among the other priorities of the FEC and its commissioners.

Mr. HARPER. And we now have time for committee members to ask questions of the witnesses. Each member is allotted 5 minutes to question the witnesses, and, of course, we have the same time clock to look at, and I'll begin by recognizing myself for 5 minutes.

And I certainly want to thank each of you for taking the time that you have out of a very busy schedule to be here and to give us some insight into this legislation on what we should do.

And, of course, Mr. Fortier, recognizing some of the things that you said about research and things of that nature, one of the responsibilities for EAC was that they were to have—and this was assigned under HAVA—they were supposed to do a study on the use of Social Security numbers in voter registration, and I believe that it was due in 2005. And as of April 2011, we don't have it, even though there have been inquiries. And their response, EAC's response, was that it was the responsibility of the Social Security Administration, which they have responded back, no, under HAVA it is your responsibility. So we have had some disappointment in that response.

I don't know if you were in the room when I did my opening, but we asked for simple questions to be responded to by April 6th. How hard is that?

And so there is a high level of frustration here as we look at what is going on. And EAC, having responsibility for fairness in elections, has two of their Commissioners commit political discrimination. That gets the government sued and results in a hefty settlement being paid by the taxpayers ultimately.

So there are many things here that we are dealing with. But as it comes to research, which is certainly an important aspect, who else besides EAC can handle the research responsibilities that are already in the system?

Mr. FORTIER. Well, I do think it is important that there be a Federal role, a core Federal role. It is true that there—since our problems in 2000 have been much more interesting to the academic community, certainly the secretaries of state, their organizations, and local elections officials, the elections centers do lots of good work in that area. But what is difficult is, and what I think needed is, an organization that can go to States and localities and say, look, we need relatively common information, and it is a difficult challenge because of the differences out there.

I have written a book about absentee and early voting, and I know that each State calls it something different. And some States don't report at the State level on this. And I found myself having to go to town-level data. So just to know what is happening in the States for you, for Federal policymakers, for us requires some sort of core data. Yes, others can do additional research, but I do think that that is important to preserve.

Mr. HARPER. Thank you, Mr. Fortier.

Secretary Gardner, if I may, can you explain the difference between a payment and a grant under HAVA and how the EAC's use of terms interchangeably affects your State or other States?

Mr. GARDNER. Well, a payment: 99-plus percent of the money that has been given to the States have been payments. To comply with the provisions of HAVA, make sure that all disabled voters have a way to participate that protects them, and create the state-

wide database. A grant was for colleges, for instance, that want to have a program for students that might want to work in a polling place. It amounts to a small amount of money; compared to almost 3 billion for payments, maybe 30 million for grants. But grants tie the States up. Grants have a lot more strings attached, and that really got to the fundamentals of—is this just an attempt to prolong the existence by bringing the States in tighter in a way that doesn't give back? That is why we made a big point of it.

It is laughable that there was a grants director and not a payments director, because the focus is towards the OMB and rules and rulemaking. That is what we at the State level are really concerned about. That is what your attempt—that is why I applaud you for that.

This is—this is a waste of money. From all of my experience: We had the closest U.S. Senate race in history decided by two votes in 1974. The U.S. Senate decided—the Rules Committee—that they would do a recount themselves. Just like your counterpart, you—if you decided someday you wanted to do a recount because you are the final judge of the qualification election of your own members.

We shipped all the ballots to Washington. They remained down here for about 20 years. About a decade ago someone called me and said, "What are all these boxes doing in one of the closets in one of these buildings from New Hampshire, what are they doing here?" They were the recount ballots, and the Senate spent 6 months and couldn't do it.

And this is not—I wasn't expecting your question, but here is an example. This is one of these Quick Starts, best practice. This is about recounts. This is laughable what is in here. It doesn't help at all. I have done a lot of recounts in my day, and my testimony will tell you that. If the U.S. Senate got this when they were deciding to look at recounts, whoever did this, they would ask a lot of questions. This is just one example of spending money on this and other things that are part of this.

Mr. HARPER. Thank you, Secretary Gardner. I appreciate that very much.

I am now going to recognize the ranking member Mr. Gonzalez for 5 minutes.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. Let me ask, Mr. Gardner, are you for repeal of the Help America Vote Act.

Mr. GARDNER. No.

Mr. GONZALEZ. You would not.

Mr. GARDNER. I am not for repeal of the act. I am for repeal of the EAC.

Mr. GONZALEZ. I understand that.

And, Mr. Hosemann, are you for repeal of the Help America Vote Act?

Mr. HOSEMAN. No.

Mr. GONZALEZ. And, Mr. Browning, same question.

Mr. BROWNING. No, sir.

Mr. GONZALEZ. Because you recognize that its goals and its purpose are quite valid; is that correct, Mr. Gardner?

Mr. GARDNER. Say that again, please.

Mr. GONZALEZ. The act itself, you don't want it repealed because it is a valid piece of legislation addressing very real issues that ex-

isted at the time of its enactment that are still present today in our elections system. It is a relevant piece of legislation, that is all I am saying. And I am assuming all three of you said you would not want to repeal it because you think it is a legitimate piece of legislation that is relevant today. That was just an assumption. And I only have 5 minutes because I want to get some other questions.

I listen to your testimony, and it is almost as if you may be questioning the validity and the purpose of the act itself. So let us get that off the table. What you are really complaining about is the entity, the Election Assistance Commission as the entity that is charged, in essence, with carrying forth the goals of the Help America Vote Act.

And I will follow that. My colleagues believe that it is inefficient, it costs too much, but if you read the letters that we have received from the other agencies that would subsume those duties, they are all telling you, We are understaffed. One, NIST has a conflict of interest; secondly, doesn't have the resources and would be asking for more monies. The FEC is telling you, We are ill equipped; we can't do it unless you plus up. So I don't know where the savings are going to come. So, I don't even think that is going to be relevant in this particular discussion. We are not seeking to pass this particular bill to really save any money, because no one is going to point at these other agencies.

Now, let me ask you, do you really want to work with DOJ, NIST and the FEC as opposed to one entity that is charged with the responsibility of what is going to help you with the Help America Vote Act? Are you telling me you would rather be working with three, four, five different Federal agencies than one?

Mr. GARDNER. Your premise is you are saying it helps us. I don't believe it helps us. You said that the act helps us, and I am saying to you that I don't believe that it does help us.

Mr. GONZALEZ. Then why aren't you for repealing it? No, I mean, I think what we are really getting into is all sorts of philosophy and such, which is good. But I would—let me ask the three secretaries of state. Do all your local election officials share your opinions as expressed today in your testimony? Mr. Gardner.

Mr. GARDNER. Yes, I can say that—and I work very closely with our elections officials. We have over 6,000 that participate just on election night itself. We have workshops all year. When I have shown them some of these or they have seen them, there was no enthusiasm whatsoever.

Mr. GONZALEZ. All right. I'm saying that—

Mr. GARDNER. The whole thing about best practices—

Mr. GONZALEZ. Total waste of time? Nothing; they have not benefited at all by what the Election Assistance Commission has attempted to do nationwide? They would all agree with you?

Let me ask you, Mr. Hosemann, do all of your local elected officials agree with your assessment in your testimony?

Mr. HOSEMAN. They do.

Mr. GONZALEZ. So you can speak for each and every one of them?

Mr. HOSEMAN. Well, I didn't speak with each and every one of them about here, but we do meet with election Commissioners. We train all of them. We have 400 of them. I visit with them on a regular basis, sometimes monthly, and oftentimes—

Mr. GONZALEZ. And they are all for doing away with EAC?

Mr. HOSEMANN. They are frustrated with EAC.

Mr. GONZALEZ. No. They are all wanting to do away—

Mr. HOSEMANN. The ones I have spoken with are in favor of doing away with EAC.

Mr. GONZALEZ. Well, what I am saying, “all.” Because I think you are going to find individuals in your own states—I am just assuming this; maybe I will hear from them, hopefully I would, because we do have some local officials that are willing to testify and correspond with us.

Mr. Browning, same question. Do all of your local elected officials agree with your testimony today?

Mr. BROWNING. The way your question is phrased, no.

Mr. GONZALEZ. And the reason for that?

Mr. BROWNING. Well, I haven’t polled all my local elections supervisors, but the ones that I have talked to, and I talk to my supervisors of elections on a regular basis, they have sensed or expressed to me a sense of frustration with the EAC. Certainly we are appreciative of funding that the Federal Government, through the EAC, has provided for the modernization of voter registration and voting systems, but, you know, when you have election administration being done or—I won’t even say—to a degree micromanaged, at least they are attempting to micromanage elections through the EAC, it doesn’t work. The folks that best know how to administer elections are those locally, and I think that they see the EAC as an intrusion.

Mr. GONZALEZ. I am going to yield back if you’ll give me one second, sir. First I want to apologize to our witnesses and my colleagues. I am supposed to be chairing a meeting right now, and so I am 20 minutes late, and this group gets very restless, so I will apologize. But thank you for your testimony.

I think if we are realistic about what we are trying to do and to assist you, it is not necessary to do away. All we have to do is improve on what has proved beneficial. That is why I asked that question. I don’t believe that all the election officials agree with your assessment, because, to be honest with you, we have someone present today that believes it has been beneficial. That is a local election official.

Mr. Chairman, thank you for your indulgence.

Mr. HARPER. Thank you very much, Mr. Gonzalez.

I now recognize the gentleman from Indiana for 5 minutes.

Mr. ROKITA. Thank you, Mr. Chairman. I would just say for the record and to the witnesses, having supervised elections, having run elections in the State of Indiana for 8 years, I don’t know—this is to Mr. Gonzalez—I don’t know a group of election officials that agree on everything 100 percent of the time. In that sense they are no more than a simple microcosm of this great country.

I also would say the fact that bureaucrats might write in and tell us that they are overworked and understaffed has little weight with me, and that comes from a guy who used to run a bureaucracy. I used to run it on 1987 dollars unadjusted for inflation. We can all do more work around here, Mr. Chairman.

To my friend Mr. Fortier—I guess we haven’t met, so I shouldn’t say “friend” so flippantly. You were called in, I would suggest, as

a friendly witness. And I appreciate your concentration on research. Are you aware that the EAC contracts out most of its research, or at least does, yes or no?

Mr. FORTIER. Yes.

Mr. ROKITA. Okay. Are you aware that it contracts it out to organizations that aren't necessarily unbiased, or do you not have an opinion? Yes or no, no opinion.

Mr. FORTIER. There is a lot of research, I suppose—

Mr. ROKITA. Are you aware that I was part of a group as secretary of state that worked with contractors to the EAC on issues of voter intimidation and photo ID, yes or no?

Mr. FORTIER. Yes.

Mr. ROKITA. You are aware that I was part of that.

Are you aware that that contractor was discredited and had to leave its liberal, biased university, a specific law school, because of an inspector general's report that came out indicating that the EAC had contracted biased people, biased organizations, and gave biased results back?

Mr. FORTIER. I am not aware of that.

Mr. ROKITA. Okay. Now that you are aware of that, would you rely on the EAC for its research, yes or no?

Mr. FORTIER. I have a hard time answering yes or no, but what I would say is this: That, yes, the EAC itself I don't expect to do its research in house. I—the core functions—

Mr. ROKITA. Do you have a problem—

Mr. FORTIER. Data collection, I think, is the most important feature.

Mr. ROKITA. Do you have a problem with professional government organizations like the GAO performing the election research?

Mr. FORTIER. Not necessarily, but I think it would be potentially too diffuse. It wouldn't have the focus of an organization that had a core competency—

Mr. ROKITA. Do you think—

Mr. FORTIER [continuing]. Having five or six, seven people—

Mr. ROKITA. Core competency. But you just understood that they contract out their research.

Mr. FORTIER. They contract out data collection, but having people in house who can analyze—

Mr. ROKITA. No, no, no. I was part of a group that didn't just contract out data collection, they made conclusions.

To my secretary of state friends, starting with Mr. Hosemann, is there anything in the Mississippi Constitution that allows the Federal Government to be involved in the election process?

Mr. HOSEMAN. No.

Mr. ROKITA. Okay. Do you see anything in the U.S. Constitution that allows for the Election Assistance Commission to do what it does?

Mr. HOSEMAN. No, I do not. And I would tell you that I think clearly we believe that the collection of data is important, and we believe that the collection of data by impartial individuals is important to the States. We share that data. Florida, Mississippi, Indiana, all of us share that data.

Also the indication that there would not be a spotlight on the election system with the removal of the EAC is not shared by me.

We get the spotlight thrown on the secretary of state's office every time there is an election, and plenty of reporters and people looking at it.

So it is not about the data collection. I think it can be better done in another location. It is not about the fact that this will somehow go away and people won't look at the election system anymore. I can assure you they will look at it in Mississippi. I can't testify for the other States, but I feel they will as well.

Mr. ROKITA. Thank you, Mr. Hosemann.

And, Secretary Browning, thank you for being here as well. Do you know Supervisor Gill of Citrus County, Florida?

Mr. BROWNING. Yes, very well.

Mr. ROKITA. She testified here last year before I got to Congress and said some nice things about the EAC at a hearing that was a look back at the 2010 election. And this comes from my friend Congressman Nugent, who is of that county. He had a conversation with her today, and I want to get this on the record and have you respond. This is her quote from, I believe, this morning: The more I learned about it, being the EAC, the more I was for eliminating the organization.

So she has changed her view in an opposite direction from how Ms. LaVine's testimony recorded her view. Any reaction to that?

Mr. BROWNING. Yes. As a matter of fact, I had a conversation with Supervisor Gill just last evening, and she had indicated to me that the more she found out, the more she realized that the EAC was more of a burden than it was a help. She expressed that to me last night.

Mr. ROKITA. Secretaries, I thank all the witnesses. Sorry I didn't get to each of you. And I yield back.

Mr. HARPER. Thank you very much, and I appreciate you being here. What we want is we want to have efficient and fair elections in this country where everyone who is legally able to vote can vote, and those that shouldn't don't. And I know that is the goal of everybody in this room, but when we look at this and the function and the history of EAC, this is why we are here today.

We are not attacking HAVA. In fact, if we are saying that we support that bill, well, within that bill was a provision that the EAC was only authorized through 2005. I think when you look at the history of your organization, of NASS, and what they have done, you have recognized that and looked at that. And so when we see the inability to do the job, that is an issue.

One last thing that I will note that Mr. Gonzalez brought up of essential functions. Right now the EAC has, I believe, 50 employees. Only six of those would be handling what we would deem to be essential. So there is a significant cost savings of what we would be talking about in this reassignment.

But we do look forward to hearing from you. If you have other thoughts, suggestions, you know, we definitely want to hear from you. We appreciate each of you, your service and dedication to the process.

With that, this hearing is adjourned.

[Whereupon, at 11:56 a.m., the subcommittee was adjourned.]

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

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ROBERT A. BRADY, PENNSYLVANIA
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ONE HUNDRED TWELFTH
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JAMIE FLEET, MINORITY STAFF DIRECTOR

July 13, 2011

The Honorable Bill Gardner
Secretary of State
107 North Main Street, State House, Room 204
Concord, NH 03301

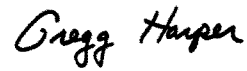
Dear Secretary Gardner,

Thank you for testifying during the April 14, 2011, Committee on House Administration Subcommittee on Elections Hearing on H.R. 672 – To Terminate the Election Assistance Commission. The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee by **May 11, 2011**.

1. What functions, if any, that the EAC currently performs would you find helpful going forward to fulfill your responsibilities as Secretary of State?
2. What kind of authority has the EAC tried to impose on states that particularly concerns you as a Secretary of State?
3. Has the EAC made your job as Secretary of State more difficult? If so, how?
4. What specifically do you disagree with in the EAC's Conducting a Recount Quick Start Guide? Did you express your concerns to the election officials who created the Quick Start Guide? New Hampshire has two representatives on the EAC's Standards Board, which provides guidance and input to the EAC. Did either representative voice those opinions in their capacity as board members?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Gregg Harper". The signature is written in a cursive, slightly slanted style.

Gregg Harper
Chairman, Subcommittee on Elections

NEW HAMPSHIRE
DEPARTMENT OF STATE

William M. Gardner
Secretary of State



Robert P. Ambrose
Senior Deputy Secretary of State

David M. Scanlan
Deputy Secretary of State

May 11, 2011

The Honorable Gregg Harper
Chairman, Subcommittee on Elections
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515-6157

Re: Termination of the Election Assistance Commission (EAC)

Dear Mr. Harper:

We are in receipt of your letter dated April 27, 2011, asking additional questions to be added to the record. Please find herewith our responses to your questions, which appear in bold:

1. What functions, if any, that the EAC currently performs would you find helpful going forward to fulfill your responsibilities as Secretary of State?

Response:

The Inspector General's 2008 audit of the EAC identified the various EAC roles. We have organized our response to reflect:

- A. Helpful roles of the EAC,
- B. EAC roles which would be more effectively accomplished by other entities, and
- C. EAC roles that should be phased out.

A. The EAC's helpful roles are as follows:

- The following helpful functions are useful to support the credibility of voting systems. This is work that is currently performed substantially by the National Institute of Standards and Technology (NIST) for the EAC.

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Establishing testing protocols;

Drafting voting system standards to match testing protocols;
 Certifying test labs under NIST's lab accreditation program (NVLAP); and
 Conducting research to support new voting system standards and testing protocols.

B. The roles of the EAC which would be more effectively accomplished by other entities are as follows:

- The certification, decertification, and recertification of voting systems may prove useful eventually, although fewer states' laws appear to rely solely on the entire process. *(Very few EAC-certified voting systems are in use in the states. While a few states rely entirely on this NIST-supported EAC process, states seem to be selecting portions of the process and incorporating the EAC/NIST efforts in some manner. Over time, NIST may be able to do a better job of adding value to this process, given that NIST has been successful overall with its pieces of the process thus far.)*
- The next release of Voluntary Voting System Requirements would, if properly executed, establish a framework for the next generation of voting systems. *(The process of establishing new Voluntary Voting System Guidelines, Version 2.0, seems to have bogged down at the EAC, with expensive and impractical solutions in the current draft. The effort may prove useful over time if it were to yield a blueprint for improved voting systems. Another agency may be better able to obtain consensus around a practical solution. While this is an ideal outcome, it appears unlikely to be achieved under EAC leadership. The stakeholder involvement process, while imperfectly carried out by the EAC, is a critical role. It should actively engage, along with existing participants, computer engineers, statisticians, and accountants, particularly those with experience as election workers.)*
- Provide information and guidance with respect to laws, procedures and technologies affecting the administration of Federal elections. *(It is not clear whether this effort has been worth the resources dedicated to it. The EAC's information clearinghouse role appears to be valuable, but could be carried out by some other entity, since it consolidates studies conducted by the states.)*
- Administer payments to states to meet HAVA requirements: *(This role would more fairly be accomplished by other agencies.)*
- Research and report on matters that affect the administration of federal elections. *(This role can be and is being done by others.)*

C. The roles of the EAC that should be phased out include:

- Manage funds targeted to certain programs designed to encourage youth participation in elections. *(Done.)*

- Audit persons who received federal funds authorized by HAVA. (*This role should be phased out, now that many states have spent more on HAVA than they were provided by Congress. Before long, all states will have spent far more on HAVA and the MOVE Act than they were provided by Congress.*)
- Submit an annual report to Congress describing EAC activities for the previous fiscal year. (*This role would be no longer necessary with the termination of the EAC.*)

2. What kind of authority has the EAC tried to impose on states that particularly concerns you as a Secretary of State?

Response:

Before the EAC will remit HAVA requirements payments to states, the EAC insists that states sign documents that acknowledge the payments are “grants” and, as such, are subject to OMB circulars that are regulations (with CFR numbers). This is contrary to the plain language of 42 USC 15329 (HAVA, Section 209), which states:

“The commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government...”

The EAC has refused to send HAVA requirement payments even when a state complies with federal law, which requires essentially that they sign the certification set forth in HAVA and supply requisite matching funds to the state’s Election Fund. For further details on the issue of “grants” and “payments,” refer to my April 14, 2011 testimony to the Subcommittee on Elections, Committee on House Administration.

By inducing states to sign documents acknowledging requirements payments are “grants,” the EAC can then attempt to require states to fully comply with the OMB Circulars identified in the EAC’s “HAVA Funds FAQs” last updated in 2006 at <http://www.eac.gov/assets/1/Page/HAVA%20Funds%20FAQ.pdf>. These FAQs have resulted in a number of federal audit observations on the states’s HAVA spending, and countless hours dealing with requirements in these regulations (the OMB Circulars).

In these federal audits of states, the EAC Office of Inspector General begins by referring to federal law, stating that the purpose is to determine “whether the (state) used (HAVA) payments ... in accordance with HAVA and applicable requirements; accurately and properly accounted for property purchased with HAVA payments and for program income, and met HAVA requirements for Section 251 funds for an election fund, for a matching contribution, and for maintenance of a base level of state outlays.” Then, without referencing federal law, the auditor states, “In addition, the Commission requires states to comply with certain financial management requirements, specifically:

- Comply with the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments* (also known as the “Common Rule”) as published in the Code of Federal Regulations 41 CFR 105-71.

- Expend payments in accordance with cost principles for establishing the allowance or disallowance of certain items of cost for federal participation issued by the Office of Management and Budget (OMB) in Circular A-87 (also known as 2 CFR Part 225).

The EAC Inspector General does not make clear what portions of 41 CFR 105-71 (the "Common Rule") and 2 CFR Part 225 (OMB Circular A-87) are applicable to HAVA programs, nor does it explain why the EAC selects some requirements in these regulations and not others. 2 CFR Part 225 (OMB Circular A-87), states, "**Required Action.** Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue regulations to implement the provisions of this Circular and its Attachments." One might reasonably ask, 'If the EAC cannot carry out the obligation it has to issue tailored regulations under this Circular, why should the states comply?'

The preponderance of federal spending on HAVA was in the form of payments rather than grants. Congress wanted the HAVA tasks accomplished, and was willing to provide an infusion of federal funds but did not wish to overburden the states' election offices with a confusing and unmanageable array of federal requirements. In carrying out HAVA, the EAC has effectively imposed regulations. In order to obtain HAVA funds, the states have had to agree to be subject to regulations, which in turn carry with them their own extensive audit ramifications, some of which are revealed below. The Inspector General's audits of HAVA spending by states include the following regulatory references, which indicate that federal regulations are already in place:

Texas. Final Audit Report. In the Draft Audit Report of the Texas Secretary of State, Assignment No. E-HP-TX-06-06 dated October 2006, the federal auditor stated on page 11 that "Program income has not been properly computed, reported and (if applicable) used to support HAVA-related activities. According to the *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Government* (41 CFR 105-71.125), program income is defined as gross income received from a grant-supported activity during the grant period and includes items such as fees from the use or rental of real or personal property acquired with grant funds."

Illinois. Final Audit Report. In Report No. E-HP-IL-07-06 dated October 2006, the federal auditor stated on page 4 that, "The cash management requirements included in 41 CFR 105-71.120 provide that the time elapsing between the transfer of funds and the subsequent disbursement should be minimized. In addition, the State Board of Elections incorporated a provision in its agreements with the counties that the funds provided should be expended within 30 days. The Board's agreement with the Office of the Secretary of State identified the funding and expected quarterly expenditures but did not include provisions for cash management."

South Carolina. Final Audit Report. In Report No. E-HP-SC-11-06, dated January 2007, the federal auditor stated on page 4, "South Carolina used HAVA funds to educate voters on the new voting system and regulations. South Carolina capitalized the bus as a \$92,506 item in its equipment inventory... we questioned the costs of \$92,506 because South Carolina did not obtain prior approval from EAC, as required by OMB Circular A-87 before purchasing the bus. Specifically, Attachment B to Circular A-87, Part 15, requires that agencies receive

advance approval for the purchase of general purpose equipment or special purpose equipment with a unit cost of \$5,000 or more.”

Pennsylvania. Final Audit Report. In Report No. E-HP-PA-10-06 dated January 2007, the federal auditor stated, “The Department did not adequately support salary charges for six staff positions funded 100 per cent by (HAVA) payments for the two-year period January 2004 through December 2005. Requirements for time distribution records are included in Office of Management and Budget Circular A-87 states that where employees are expected to work solely on a single Federal award, charges for their salaries and wages will be supported by semi-annual certifications that the employees worked exclusively on that program for the period covered by the certification.”

Virginia. Final Audit Report: In Report No. E-HP-VA-12-06 dated May 2007, the federal auditor stated, “The Code of Federal Regulations at 41 CFR 105-71.132(3) states that a control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft shall be investigated. ..We recommend that the EAC require the SBE (State Board of Elections, Virginia) to develop and implement policies and procedures to ensure the security of voting machines and other equipment complies with the USEAC guidelines in the pamphlet entitled Quick Start Management Guide issued in September 2006, and conduct a review of the security procedures in all counties to ascertain compliance.”

This final statement in the paragraph is noteworthy for its disregard of federal law. 42 USC 15329 (HAVA Section 209) states, “The Commission shall not have any authority to issue any rule, promulgate any regulation, or take other action which imposes any requirement on any State or unit of local government...” 42 USC 15485 (HAVA Section 305) states, “The specific choices on the methods of complying with the requirements of this title (which includes most of the HAVA requirements) shall be left to the discretion of the State.” No section of HAVA specifically authorizes the EAC to establish Quick Start Management Guides and impose them as requirements on the states. Seemingly oblivious to the plain meaning of federal law, the auditor recommends, in a Final Audit Report, that, by virtue of the fact that a Quick Start Management Guide exists, the EAC rely on it as a requirement subject to federal audit.

3. Has the EAC made your job as Secretary of State more difficult? If so, how?

Response:

The EAC has unnecessarily made my job, as Secretary of State, more difficult. The EAC has cost the state years of wrangling over the matter described in #2 above. Had the EAC read the plain language of the law, it could have saved states countless hours of staff time dealing with the above-mentioned regulations and, in our case, provided funds needed to carry out HAVA and the MOVE Act on a timely basis.

4. What specifically do you disagree with in the EAC’s Conducting a Recount Quick Start Guide?

Response:

a) None of the five photographs in the “Conducting a Recount Quick Start Guide” brochure reflect a specific recount process.

b) The Quick Start Guide, on conducting a recount, states the purpose of a recount in its introductory paragraph, as follows: "In general, a recount is conducted for a particular race or measure to confirm the result of the vote canvass." Providing transparency, accountability, and accuracy is never mentioned as a goal. However, achieving the latter goals is critical to candidates and the general public in ensuring confidence in the outcome.

c) The issue of voter intent is not addressed. Close elections and resulting recounts often hinge on determining the intent of a voter. In some cases, the mark on the ballot leaves a question as to the intent of the voter, either because of where it was placed, an erasure, or a write-in with questionable spelling.

d) There is little detail, such as a sample recount-day checklist containing rules for counters and observers, that might be considered of practical value to recount officials. During state recounts, the New Hampshire Secretary of State circulates "Rules of Procedure for Recounts" which include the list below. (When conducting local recounts, local election officials often request a copy of these procedures.):

- For each two-person team, each candidate may have one observer.
- Each candidate will be informed as to how many two-person teams will be conducting his/her particular recount.
- No observer will use pencil or pen while sitting at the recount table.
- Observers are prohibited from touching the ballots. (We have found individuals with lead under their fingernails.)
- For contests in which the instructions to voters are 'Vote for not more than one:' Ballot counting teams place ballots in piles for each candidate in a particular contest. Ballots are later counted by each member of the two-member team in stacks of 25.
- For contests in which the instructions to voters are 'Vote for not more than (a number greater than one)': One member of the two-person team will read the ballot declaring those legal votes apparent from the voter's marks. The second member will place a mark on his/her tally sheet for the candidates(s) receiving a vote.
- If there is a challenge of any ballot, it must be made immediately and the Secretary of State will rule on such challenge. If his decision is protested, the Secretary of State will attach a statement of fact on the protested ballot.
- The candidate who requested the recount may cancel same at any time during the procedure, at which time the Secretary of State will publically announce the candidate's request to cancel the recount and that particular recount will cease at once. (There are no partial recounts.)
- Once a town or ward is to be recounted, it shall be completed by the particular team or teams involved before starting another precinct.

- The Secretary of State will maintain a tally sheet showing the old and new figures and at the completion of a recount will announce the official winner based on the recount figures.
- NO SMOKING OR CELL PHONES in recount areas.

Did you express your concerns to the election officials who created the Quick Start Guide?

Response:

New Hampshire has, in the past, submitted formal comments to the EAC regarding EAC best practices - comments that were aimed at incorporating more transparency and accountability into best practices. In a letter dated August 13, 2004 (enclosed), Auburn Town Moderator C. Donald Stritch, a 35-year election official, and I provided comments on the EAC's Best Practices Tool Kit. The letter notes that the EAC letter requesting comments was received by my office on August 9, 2004, and comments were due on August 13, 2004.

The Best Practices Tool Kit consisted of 62 pages and referenced hundreds of other pages, so preparing comments was no small task. In Mr. Stritch's and my August 13, 2004 letter, the final paragraph reads as follows: "Please feel free to contact us at the telephone numbers herein if you wish to explore these issues in greater depth. Kindly advise us if it is possible to have additional time to respond to the material you have asked us to review." My office received no reply to this letter. We only had four days to respond, and we had worked hard on our answers. The EAC's failure to reply left us with the feeling that our views were of no value to them, and that the purpose of the EAC's request had been window dressing.

The EAC published the Quick Start Guides, so it is not entirely clear to us who were the election officials who "created" (or provided input) for the Quick Start Guides. It takes time to draft and review these documents, and New Hampshire acknowledges any contributions made by other election officials in this area. To be effective with New Hampshire's local election officials, best practices should focus on carrying out the law and achieving legislative goals. New Hampshire, like many other states, has barely enough staff resources to enable it to communicate best practices to its own 6,000 election officials in response to new laws created by Congress and the state legislature.

If the agenda presented an opportunity to review and critique the Quick Starts and Best Practices, New Hampshire would be actively engaged within the constraints of its resources. High on the list would be recommendations to update the following EAC documents:

- "Canvassing and Certifying an Election (Chapter 13)," which fails to clearly address reconciliation issues that are prominently featured in the news in the past month and after most major elections.
- The Quick Start Guide on "Developing an Audit Trail," which fails to mention any use for paper ballots that could be used to independently check the original count in the event of a recount.

New Hampshire has two representatives on the EAC Standards Board, which provides guidance and input to the EAC. Did either representative voice those opinions in their capacity as board members?

Response:

We believe that the Standards Board is the appropriate place to review these Best Practices and Quick Start Guides. Going forward, I believe it makes sense for the Standards Board, as currently constituted, to represent state and local election officials.

At the time that the attached August 13, 2004 letter was sent, both C. Donald Stritch and I were members of the EAC Standards Board. During the last seven years, there have been five designated members of the Standards Board from New Hampshire. I have been told by the one member who attended all Standards Board meetings except the first organizational session that there was no Standards Board agenda item in which draft Best Practices and Quick Start Guides were methodically taken up, reviewed and critiqued in a comprehensive manner.

I hope this letter is responsive to your request. I would be happy to answer further questions as they arise.

Sincerely yours,



William M. Gardner

Enclosure: August 13, 2004 letter to the EAC

NEW HAMPSHIRE
DEPARTMENT OF STATE

William M. Gardner
Secretary of State



Robert P. Ambrose
Senior Deputy Secretary of State

David M. Scanlan
Deputy Secretary of State

August 13, 2004

DeForest B. Soaries Jr., Chairman
Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, D.C. 20005

Re: Comments on the Best Practices Tool Kit

Dear Chairman Soaries and Commissioners:

Thank you for your letter requesting comments on the Best Practices Tool Kit which we received on August 9, 2004. That letter requested that we respond by Friday, August 13, 2004. We are writing as New Hampshire's two representatives on the Elections Assistance Commission Standards Board to request additional time to read and comprehend the 62-page document sent to us, as well as the hundreds of pages referenced in the Tool Kit. Given the momentous nature of this task and the diversity of the states, it is too much to expect that we should be able to comment so quickly on matters of such great importance.

First, let us say that we appreciate the effort made to produce the Best Practices Tool Kit. With short notice and limited resources, those who produced this material have made a start on a challenging task.

After making a cursory review of the Best Practices Tool Kit, we can readily identify opportunities to improve on the proposed practices in certain areas. For example, we believe that some improvements can be made to the following pages:

- A) Page 31, under the topic entitled "E. Post-Election: Challenges and Solutions; 1) Post-election audits, it recommends "Conduct a post-Election audit of all electronic systems. The National Institute for Standards and Technology (NIST) advises that all jurisdictions using electronic voting system should plan to incorporate accepted independent auditing standards for information systems. For a description of auditing procedures, refer to models provided by Information Systems Audit and Control Association." **While we welcome the experience and advice of the accounting industry, we also recognize that there are**

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DeForest B. Soaries Jr., Chairman
 Election Assistance Commission
 Page 2

election issues that accountants are not accustomed to dealing with. We believe this recommendation should be more comprehensive and explicit. It is perhaps too much to expect election officials to delve into “models provided by the Information and Audit Control Association” by themselves. Until we know more about these models, we are not confident that the electorate will be inclined to hand over its rights to free and fair elections to a trade association.

- B) Page 32, under the topic entitled “Recount Procedures,” it states “Show that the vote totals from the machine equals the vote totals reported by the election software.” **This recommendation is inconsistent with the recommendations for accountability and transparency which appear in the Best Practices Tool Kit on Page 8, Section 1.10 and Page 26, Section 1.2. In light of the justified public clamor for transparency and accountability in elections, this recommendation does not rise to the level of a best practice that we believe the people in our state and many others would expect.**
- C) Page 34, under Step-by-step Recount Procedures, it states:
- a. “If the recount request allows you to reload your storage media, reload to verify the results to the original. If a hand-count has been requested, print the paper audit trail/ballots from each storage media, voting machines, precinct, etc. depending on your voting system. County (sic) the votes in the race in question by hand.” **Again, this suggestion is inconsistent with the Tool Kit’s stated principles of transparency and accountability. We believe that it is inappropriate to suggest that the public will accept regurgitation from the machine as a valid recount procedure that would legitimize the election results.**
 - b. “Rescan the paper ballot (mail and provisional), keeping them in their original batches, if allowed. If not, hand-count the paper ballots... total all reports and make sure that they agree. Results from machine tapes should agree with election software reports.” **Our state law requires the Secretary of State to hand-count paper ballots in a recount. We feel that a rescanning of the ballots may not achieve the standard of best practices that we believe the people in our state and many others have come to expect and rely upon. A hand-count helps to achieve a reasonable degree of transparency to ensure voter confidence. We are attaching a copy of our recount procedures that would enable a jurisdiction to reach an unbiased result. In this case, the lowest common denominator does not necessarily constitute a best practice.**

DeForest B. Soaries, Chairman
Election Assistance Commission
Page 3

Please feel free to contact us at the telephone numbers herein if you wish to explore these issues in greater depth. Kindly advise us if it is possible to have additional time to respond to the material you have asked us to review.

Sincerely,



C. Donald Stritch
Moderator of Auburn, New Hampshire
Telephone: (603)679-9353
(603)432-5348



William M. Gardner
New Hampshire Secretary of State
Telephone: (603)271-3242

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

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PHILIP KIKO, STAFF DIRECTOR

Congress of the United States
House of Representatives
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ROBERT A. BRADY, PENNSYLVANIA
RANKING MINORITY MEMBER

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CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH
CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

July 13, 2011

Ms. Jill LaVine
Registrar of Voters
Voter Registration and Elections County of Sacramento
7000 65th Street, Suite A
Sacramento, CA 95823-2315

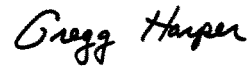
Dear Ms. LaVine,

Thank you for testifying during the April 14, 2011, Committee on House Administration Subcommittee on Elections Hearing on H.R. 672 – To Terminate the Election Assistance Commission. The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee by **May 11, 2011**.

1. Your written testimony before the Committee suggested that the EAC is necessary to oversee California's compliance with HAVA's requirement of statewide voter registration databases. Who is responsible under HAVA for the development of statewide voter registration databases – the states or the EAC? Which do you think is better suited to that role?
2. Neither the current year's budget nor the EAC's request for next year have money for requirements payments. Do you think that federal programs should be cut to restore federal election reform grants to states? If so, what are they?
3. Could information sharing between election officials be facilitated by a private organization that is composed of election officials, like the Election Center or NASED, instead of by a federal agency?
4. As someone who administers elections, what tangible benefits have you received as a result of the EAC's work?
5. Do you believe that the EAC's work saves local election officials time and money? If so, how?
6. Do you think the FEC could effectively administer the EAC's programs?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Gregg Harper". The signature is written in a cursive, slightly slanted style.

Gregg Harper
Chairman, Subcommittee on Elections

Countywide Services Agency

Voter Registration and Elections
Jill LaVine, Registrar of Voters



County of
Sacramento

Steven C. Szalay
Interim County Executive

Bruce Wagstaff
Agency Administrator

May 11, 2011

The Honorable Gregg Harper
Chairman, Subcommittee on Elections
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Dear Chairman Harper:

Thank you for the opportunity to respond to additional questions concerning my testimony on H.R. 672 – To Terminate the Election Assistance Commission (EAC). My responses follow.

- 1. Your written testimony before the Committee suggested that the EAC is necessary to oversee California's compliance with HAVA's requirement of statewide voter registration databases. Who is responsible under HAVA for the development of statewide voter registration databases – the states or the EAC? Which do you think is better suited to that role?**

The development of statewide voter registration databases should be the responsibility of the state. While the requirements for the database is included in HAVA, each state has different laws that must be taken into consideration for the development and implementation of their own system.

My concern is that the deadline to have this database operating was 2004. California filed for an extension until 2006. However, the new projected deadline for implementation in California is now 2015, nine years past the deadline. Without a statewide data base California cannot fulfill all the requirements of HAVA. A statewide data base is needed to ensure an accurate voter file.

In H.R. 672 the requirements of HAVA are not terminated but it is unclear who will oversee this requirement in California.

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2. Neither the current year's budget nor the EAC's request for next year have money for requirements payments. Do you think that federal programs should be cut to restore federal election reform grants to states? If so, what are they?

I do not have the knowledge to recommend cuts to federal programs that I am not familiar with. I think all federal programs should be reviewed for efficiencies and waste as budgets are prepared; this includes the EAC's budget. These difficult budget years affect all levels of government, including the local election official.

3. Could information sharing between election officials be facilitated by a private organization that is comprised of election officials, like the Election Center or NASED, instead of a by a federal agency?

There are other election organizations that do share information between election officials. The Election Center could facilitate the sharing of information but it would need to be funded. The Election Center requires membership to participate in their organization. Not all election officials have the budget or opportunity to attend the conferences, and those election officials that need the information the most are those that are the least likely to have the ability to pay.

There is no membership requirement to review the EAC's website, or when requesting information. Since the EAC is an independent, bipartisan committee the information shared is not biased.

NASED's membership changes from election to election and there is not the consistency needed for any long term projects. While there is information sharing at NASED, it is not their members' primary responsibility.

4. As someone who administers elections, what tangible benefits have you received as a result of the EAC's work?

The EAC's distribution of HAVA funding allowed Sacramento County to buy and implement a new voting system that is accessible to our voters with disabilities. We had worked with our Disability Advisory Committee for several years to find the best system for their needs; with this funding we were finally able to purchase the equipment to allow them to vote privately and independently.

HAVA funding was also used to purchase automated ballot sorting equipment. This equipment has saved our county money and time especially as our mail ballot program increases.

Last week the EAC held a roundtable discussion on the Life Cycle of Voting Machines. The EAC was able to webcast this meeting and I listened to hear election officials, vendors, and representatives from the testing laboratories talk about the future of voting equipment. This timely meeting helped me to realize what my next steps need to be for future budget planning and purchasing. I will be using the information from this meeting as I prepare my report to my Board of Supervisors.

**5. Do you believe that the EAC's work saves local election officials time and money?
If so, how?**

Yes, the EAC's work saves the local election official time and money. As I stated in my testimony I have used the Election Management Guide and Quick Start Guides as a check list when I am writing procedures and preparing requests for bids. The Quick Start Guides outline the steps needed and I fill in our county specific details. Since the information in these guides come from election officials they are well thought out and encourage me to think of new and more efficient ways to do what is required and save money.

As part of EAC's clearinghouse responsibilities the commission adopted a policy authorizing staff to post and distribute voting system reports and studies that have been conducted or commissioned by a state or local government. These reports allow me to make informed decisions about voting equipment purchases. I am able to contact the other states for references on vendors and their performance. Having all these reports in one place is a time saver and being able to make an informed choice for purchasing saves money.

6. Do you think the FEC could effectively administer the EAC's programs?


The two agencies have very different objectives. The FEC administers and enforces the Federal Election Campaign Act. Their stakeholders are the candidates. As a local election official I have very little contact with the FEC.

The EAC gives the states and local election officials guidance to meet HAVA requirements and is a national clearinghouse for information on election administration. The EAC is a proactive agency assisting the state and local election official with conducting successful elections, and complying with all the necessary requirements.

The only way the FEC could effectively administer the EAC's program would be to change their organization by adding a new department and hiring additional staff. Since the goal of H.R. 672 is to cut the budget, I don't see how that can be accomplished by terminating the EAC only to expand the FEC.

If you have any additional questions, please feel free to contact me at (916) 875-6060.

Truly Yours,


Jill LaVine
Registrar of Voters
Sacramento County

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

GREGG HARPER, MISSISSIPPI
PHIL GINGREY, GEORGIA
AARON SCHOCK, ILLINOIS
TODD ROKITA, INDIANA
RICH NUGENT, FLORIDA

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ROBERT A. BRADY, PENNSYLVANIA
RANKING MINORITY MEMBER

ZOE LOFGREN, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH
CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

July 13, 2011

The Honorable Kurt Browning
Secretary of State
R. A. Gray
500 South Bronough Street
Tallahassee, FL 32399-0250

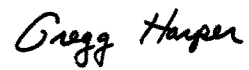
Dear Secretary Browning,

Thank you for testifying during the April 14, 2011, Committee on House Administration Subcommittee on Elections Hearing on H.R. 672 – To Terminate the Election Assistance Commission. The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee by **May 11, 2011**.

1. In your testimony you suggest preserving some form of the elections community input in the voting machine testing and certification process. What form of input would be the best? Should it be the same as the current boards or something different?
2. Are you aware of the collaboration between the EAC and some Florida counties to help identify and fix the ES&S DS200 freeze/shutdown issue? Did Florida's testing division identify the freeze/shutdown issue that the EAC is currently investigating? If so, when did Florida's testing division notify Florida counties about the issue?
3. Even though Florida does not require any component of the EAC's testing and certification program, do the elections division or any of the counties benefit from the EAC's program?
4. Did Florida create its testing standards from scratch or were they based upon the EAC's standards?
5. Do you think it would benefit Florida to have the EAC's responsibilities transferred to a regulatory agency such as the FEC or DOJ?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Gregg Harper". The signature is written in a cursive, slightly slanted style.

Gregg Harper
Chairman, Subcommittee on Elections



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KURT S. BROWNING
Secretary of State

May 10, 2011

Mr. Gregg Harper, Chairman
Committee on House Administration
Subcommittee on Elections
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Dear Chairman Harper,

Thank you for allowing me the opportunity to testify before the Committee on House Administration, Subcommittee on Elections, on April 14, 2011 regarding H.R. 672. As requested, I am providing the following responses to your additional questions.

1) In your testimony you suggest preserving some form of the elections community input in the voting machine testing and certification process. What form of input would be the best? Should it be the same as the current boards or something different?

It is my opinion that the current Standards Board and Board of Advisors could be combined to achieve more efficiency. Each state should and territory should continue to have two representatives and maybe pull a few of the key members from the Board of Advisors to serve on the newly-constituted "Standards Board." I would consider renaming the newly-constituted board to reflect more accurately their role. This structure would continue to provide the states with a mechanism for offering input into the issues that affect the administration of elections.

2) Are you aware of the collaboration between the EAC and some Florida counties to help identify and fix the ES&S the DS200 freeze/shutdown issue?

Yes, August 26, 2010, EAC Matthew Masterson

Did Florida's testing division identify the freeze/shutdown issue that the EAC is currently investigation?

On August 13, 2010, Orange County indicated a concern with DS200 freeze and shutdown. ES&S had indicated that the problem was with "X windows" library. ES&S provided a remedial correction (DS200 version 1.4.3.4) and iBeta VSTL provided the trusted firmware to Florida. Florida Division of Elections' Bureau of Voting Systems Certification (BVSC) completed this source code review and tested the executable. (See the timeline)

April 14, 2010, Voting News blog, OH: 10 percent of Cuyahoga County's voting machines fail
April 29, 2010, email, Dan McCrea DS-200 L&A shutdown issue – Cuyahoga County, OH
August 13 and 18, 2010, email, Louis Torres, Orange County, FL, DS200 Issues at Early Voting
August 16, 2010, email Bryan Higgs, ES&S Tech Bulletin DS200, PRBDS2000008, (TB July 7, 2010)
August 18 and 18, 2010, email Corey Skradski (ES&S), Invalid memory reference
August 26, 2010, email, Matthew Masterson (EAC), DS200 User Discussion

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Page 2
Gregg Harper, Chairman

September 1, 2010, email Matthew Masterson (EAC), On-line DS200 User Discussion
September 2, 2010, email Carolyn Coggins (iBeta) DS200 v.1.4.3.4 to Florida
September 16, 2010, email Rilind Shamku (FL BVSC source code group), DS200 v1.4.3.4 source code analysis
September, 2010, FL BVSC functional audit and mass ballot test for DS200 v1.4.3.4 and try to replicate the freeze and shutdown for v1.3.8.0, v1.4.1.0, and v1.4.3.4
September 22, 2010, conference call, ES&S for DS200 version 1.4.3.4
February 16, 2011, conference call, ES&S about EAC Update and DS200 certification plans
March 10, 2011, EAC WebEx conference call, DS200 Formal Investigation Call

If so, when did Florida's testing division notify Florida counties about the issue?

We did not notify Florida counties because, on August 26, 2010, the EAC had already planned for a conference call to Florida counties and to the Florida Division of Elections.

3) Even though Florida does not require any component of the EAC's testing and certification program, do the elections division or any of the counties benefit from the EAC's program?

Yes, for liability with voter interface voting devices using VSTL's testing for electrical, lightning, electrostatic, electromagnetic, RF, and magnetic fields environments.

4) Did Florida create its testing standards from scratch or were they based upon the EAC's standards?

Florida Voting System Standards (FVSS) is based on FEC 1990 Performance and Test Standards. Florida is working on a new FVSS draft that extracts certain elements from the Technical Guidelines Development Committee's recommendations to the EAC for the next iteration of the 2005 Voluntary Voting System Guidelines, known as VVSG-IN or VVSG Version 2.0.

5) Do you think it would benefit Florida to have the EAC's responsibilities transferred to a regulatory agency such as the FEC or DOJ?

As stated in my testimony, I believe the question that needs to be asked is, does the federal government need to continue administering a program intended to fix problems that are now 10 years old, and that are essentially resolved? If the answer to the question is yes, then it would be in the best interest of Florida to have the responsibilities of the EAC transferred to the Federal Elections Commission rather than the Department of Justice (DOJ). I see the role of the DOJ as being enforcement and oversight. I believe that there needs to be separation between the role of the receiving agency and the DOJ.

If you have any questions or need to contact me please feel free to do so my contact information is 850/245-6524. I look forward to hearing from you.

Sincerely,



Kurt S. Browning
Secretary of State

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

GREGG HARPER, MISSISSIPPI
PHIL GINGREY, GEORGIA
AARON SCHOCK, ILLINOIS
TODD ROKITA, INDIANA
RICH NUGENT, FLORIDA

PHILIP KIKO, STAFF DIRECTOR

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ROBERT A. BRADY, PENNSYLVANIA
RANKING MINORITY MEMBER

ZOE LOFGREN, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH
CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

July 13, 2011

The Honorable Delbert Hosemann
Mississippi Secretary of State
P.O. Box 136
Jackson, MS 39205

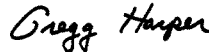
Dear Secretary Hosemann,

Thank you for testifying during the April 14, 2011, Committee on House Administration Subcommittee on Elections Hearing on H.R. 672 – To Terminate the Election Assistance Commission. The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee by **May 11, 2011**.

1. Has the EAC made your job as Secretary of State more difficult? If so, how?
2. Do you think federal programs administered by the EAC are effective to increase voter registration or turnout?
3. What functions, if any, that the EAC currently performs would you find helpful going forward to fulfill your responsibilities as Secretary of State?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely,



Gregg Harper
Chairman, Subcommittee on Elections



DELBERT HOSEMANN
Secretary of State

May 13, 2011

The Honorable Gregg Harper, Chairman
Subcommittee on Elections
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Re: Additional Inquiries Regarding Termination of the Election Assistance Commission

Dear Congressman Harper:

I appreciate the opportunity to provide additional information for your considerations regarding the above matter. Pursuant to your request, I offer the following observations relative to the EAC's interaction with my office:

1. *Has the EAC made your job as Secretary of State more difficult? If so, how?*

The concerns I have about the effectiveness and usefulness of the EAC arise, not because they have made my job more difficult, but because their activities seem to be redundant. Their work in the areas of data retention and dissemination, standards creation and maintenance and military and overseas voting can be done by other agencies, such as NIST and the FEC. It seems counterproductive to continue to fund an entire agency to perform functions that could easily be folded into existing entities. One benefit of this would be not having to provide identical reports to multiple federal agencies, and the time this would conserve.

2. *Do you think federal programs administered by the EAC are effective to increase voter registration or turnout?*

The federal programs administered by the EAC, particularly the administration of HAVA grants, are effective in increasing voter turnout. These grants have allowed the state to devote more resources to voter education and election official training, which have improved election administration and interest in the electoral process. However, grant maintenance and awards, alone, are not sufficient to maintain a separate entity, from my perspective.

3. *What functions, if any, that the EAC currently performs would you find helpful going forward to fulfill your responsibilities as Secretary of State?*

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Jackson, Mississippi 39205

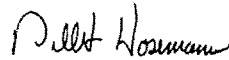
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May 13, 2011
Page 2

As I mentioned in my prepared remarks to the Committee, the EAC's serving as a clearinghouse for elections data collected from various states and territories has been extremely beneficial to me as Mississippi's Chief Elections Officer. Having the ability to compare "best practices" from other states gives all of us the benefit of different perspectives on issues critical to elections administration, and affords the opportunity to consider and, perhaps, implement solutions from one jurisdiction to similar concerns in our own. This is, to me, an important function of the EAC – however, it is not a function that cannot be performed by another entity at a considerable savings.

I hope you find these observations helpful. Please let me know if I can provide any additional information, or be of further service to you in this process.

Sincerely,



Delbert Hosemann
Secretary of State

CDH, JR/me

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

GREGG HARPER, MISSISSIPPI
PHIL GINGREY, GEORGIA
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JAMIE FLEET, MINORITY STAFF DIRECTOR

July 13, 2011

Mr. John Fortier
American Enterprise Institute
1150 17th St. NW
Washington DC 20036

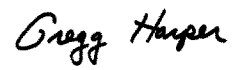
Dear Mr. Fortier,

Thank you for testifying during the April 14, 2011, Committee on House Administration Subcommittee on Elections Hearing on H.R. 672 – To Terminate the Election Assistance Commission. The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee by **May 11, 2011**.

1. In your testimony you stated that the EAC has a different mission today than when it was created. How has that mission changed?
2. If the functions of the EAC moved to the FEC, how could the FEC and this Committee ensure that the election administration function gets the attention it needs?
3. Both Commissioner Davidson and Executive Director Wilkey have testified in Congress that the reason the EAC staff and budget have grown is to meet the requirements imposed to operate a federal agency. If that is true and they really can't cut the 51.7% of their budget that goes to management, what do you think can be done to make the EAC "smaller and more focused," as you put it?
4. Currently, the Election Day Survey is conducted by contractors. Rather than retaining the agency to administer the survey as you suggest in your testimony, couldn't the FEC or the GSA hire a contractor to conduct the study as the EAC does now?
5. Does the EAC currently have any authority to compel states to fill out the Election Day Survey?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Gregg Harper". The signature is written in a cursive, slightly slanted style.

Gregg Harper
Chairman, Subcommittee on Elections

Mr. Fortier did not submit responses to the Committee prior to the printing of this transcript.