



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

May 18, 2007

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

Via HAND DELIVERY

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

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

Dear Senators Feinstein and Durbin:

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

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

BACKGROUND

Voter Identification Study

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

The statement of work for this contract required Eagleton to:

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- Prepare preliminary draft guidance document.

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

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

Voting Fraud and Voter Intimidation

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

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

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

General Research Methodology and Protocol

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

SPECIFIC QUESTIONS

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

Commission's Oversight on Eagleton Contract to Perform a Study on Voter Identification

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?

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

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

Communications responsive to this question are in the attached documents.

2. Would you please provide a copy of the approved Request For Proposals, as well as any contract modifications that were agreed to between the Commission and Eagleton Institute and subcontractors?

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

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

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

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

4. Please indicate how many project meetings occurred during the term of the Eagleton contract, including in-person meetings, conference calls regarding the status of the report, and any meeting where Commissioners were present for at least part of the meeting. Please provide copies of any minutes from those meetings.

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

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

5. Please identify the names and affiliations of members of the Peer Review group or groups that examined the Eagleton Institute drafts. Please also indicate the dates upon which any such review of the Eagleton research was conducted, and the specific concerns or complaints that were raised by members of the Peer Review group as to either the analysis or statistical methodology, if any. Please provide copies of any minutes from those meetings.

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

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

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

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

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

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

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

6. If certain members of the Peer Review groups had concerns with the data or methodology of the Eagleton study, was that information communicated to Eagleton, and were any changes made to the study based on Peer Review group concerns with methodology or data?

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

7. Who were the individuals (and what were their academic qualifications) that advised the Commission that the data, methodology, or the results of the Eagleton Contract were so flawed that the Commission should reject the report? At what point did the Commission receive input from those individuals?

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

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

8. The Commission previewed its research on the Eagleton Institute's study on Provisional Voting at its May 2006 Advisory Board meetings – why was the Voter Identification Draft Study not discussed at that time? What is the status of the Provisional Voting report?

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

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

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

9. In rejecting the Eagleton report, the Commission indicated concerns that there was only one year's worth of data. Given that this was the first year that Commission had studied the results, isn't "one year" what was originally contemplated in the Eagleton contract? Isn't the reason for having a major research institute conduct this study is so they can draw initial assessments from that data – even though that data can be augmented in future years? Because of the rejected report, will the Commission start anew for research in the 2008 elections?

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

10. What was the final, total cost of the Eagleton contract, and what was produced or released by that Commission as a result of that contract?

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

Commission's Oversight Over Voter Fraud/Intimidation Study

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?

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

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

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

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

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

