

April 21, 2016

The Honorable Thomas Hicks  
Chairman  
United States Election Assistance Commission  
1335 East West Highway, Suite 4300  
Silver Spring, MD 20910

Dear Commissioner Hicks:

As a United States senator and an advocate for citizens' unfettered voting rights, I am outraged by changes to the National Mail Voter Registration Form that were recently made by Brian Newby, executive director of the Election Assistance Commission (EAC), without public input or approval from members of the commission.

Congress established the federal voter registration form via the National Voter Registration Act of 1993.<sup>1</sup> Lawmakers recognized the need for a standardized form residents from all 50 states could use to easily register to vote. One of the stated purposes of the law is to enhance participation in the electoral process.<sup>2</sup> As you are aware, the EAC is responsible for maintaining the National Mail Voter Registration Form in accordance with the National Voter Registration Act of 1993.<sup>3</sup>

I am deeply concerned that U.S. citizens' fundamental voting rights are being threatened as a result of the unilateral changes Director Newby made. On January 29, Newby notified election officials in Kansas, Alabama and Georgia that he had amended the federal voter registration form at their request. The form now instructs election officials in those states to require documentary proof of citizenship before accepting voter registration applications.<sup>4</sup>

Newby's actions run counter to established EAC policy and precedent as well as the Administrative Procedure Act.<sup>5</sup> By failing to obtain approval from at least three commissioners and by failing to provide fair notice to interested parties, Newby's unilateral changes exceeded the EAC's statutory authority. The changes also fly in the face of the U.S. Supreme Court's ruling in *Arizona v. Inter Tribal Council of Arizona*,<sup>6</sup> a case in which justices invalidated an Arizona law requiring proof of citizenship for voter registration.

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<sup>1</sup> 42 U.S.C. §§ 1973gg-1973gg-10

<sup>2</sup> *Id.*

<sup>3</sup> 42 U.S.C. §§ 15301-15545

<sup>4</sup> "National Mail Voter Registration Form." Election Assistance Commission. *EAC.gov* Web. 13 Apr. 2016.

<sup>5</sup> 5 U.S.C. ch. 5, subch. I § 500 et seq.

<sup>6</sup> *Arizona v. Inter Tribal Council of Arizona, Inc.*, 113 S. Ct. 2247, 2259 (2013)

The EAC on multiple occasions has rejected states' requests to require documentary proof of citizenship on the federal voter registration form.<sup>7</sup> Shortly after you were confirmed as a member of the Election Assistance Commission in December 2014, the commission issued an Organizational Management Policy Statement, which clearly established commissioners' exclusive policymaking authority.<sup>8</sup> The EAC's executive director is charged with implementing policies commissioners approve, but he has no policymaking authority of his own.<sup>9</sup> Furthermore, commission actions require approval from at least three commissioners,<sup>10</sup> and official commission business must be conducted in public.<sup>11</sup>

Newby, the EAC's executive director since November 2015, did not follow any of those procedures when he unilaterally changed state-specific instructions on the federal form affecting voter registration in Kansas, Alabama and Georgia.

Regardless of your position on requiring documentary proof of citizenship when someone registers to vote, I am sure you will agree: Rules are rules. An official with no policymaking authority should not have the ability to single-handedly modify the federal voter registration form. If unchecked, Newby's actions have potential to cause irreparable harm to the Election Assistance Commission. And, worse yet, tens of thousands of American citizens could be deprived of their rights to cast ballots in a free and fair election process.

Because Director Newby had no authority to unilaterally modify the federal voter registration form, I ask that the commission ignore his illegitimate actions and revert to the policies in place prior to his appointment. The changes requested by Kansas, Alabama and Georgia are policy changes that must be considered by the full commission during a meeting that is open to the public, and, as required by statute, they may only be approved with the support of three commissioners.

For the record, I do not agree with documentary proof-of-citizenship requirements. Applicants attempting to register to vote using the federal voter registration form already attest under penalty of perjury that they are U.S. citizens. That oath is sufficient in deterring fraudulent voter registration from noncitizens. State election officials have other tools for rooting out voter fraud at their disposal that don't include willfully disenfranchising otherwise eligible citizens who are unable to immediately produce a passport, birth certificate or naturalization document. In Kansas alone, it is estimated that as many as 45,000 residents have been stripped of their voting rights for failing to provide proof-of-citizenship documents.<sup>12</sup> That far exceeds the documented number of false registrations by noncitizens in the state.<sup>13</sup>

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<sup>7</sup> Wilkey, Thomas R. Letter to Arizona Secretary of State Jan Brewer. 6 Mar. 2006; Miller, Alice P. *Memorandum of Decision Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Voter Registration Form*. 17 Jan. 2014 (Docket No. EAC-2013-0004)

<sup>8</sup> "Organizational Management Policy Statement." (2015) *Eac.gov*. Election Assistance Commission, 24 Feb. 2015. Web. 13 Apr. 2016.

<sup>9</sup> *Id.*

<sup>10</sup> 42 U.S.C. § 15328

<sup>11</sup> 5 U.S.C. § 522(b)(a)(2), (c)(1)-(10)

<sup>12</sup> Wines, Michael. "The Voter Support Agency Accused of Suppressing Votes." *The New York Times* 8 Apr. 2016

<sup>13</sup> *Id.*

Newby's actions not only violate the letter of the law and established EAC policy and precedent. They clearly violate the spirit of the National Voter Registration Act as well. As public servants, it is our mutual responsibility to make access to voting easier – not more difficult – for eligible citizens. I again ask that you ignore Newby's illegitimate, unilateral policy change. If a change to the federal form is merited, the change requires at least three votes from members of the commission.

Thank you for your prompt attention to this matter. If you have questions, or if I may be of any further assistance, please contact Janelle McClure in my personal office at [Janelle\\_McClure@mccaskill.senate.gov](mailto:Janelle_McClure@mccaskill.senate.gov) or 202-228-5856.

Sincerely,



Claire McCaskill  
U.S. Senate

CC: Matthew Masterson  
Vice Chairman  
Election Assistance Commission

Christy McCormick  
Commissioner  
Election Assistance Commission