

Congress of the United States
Washington, DC 20510

June 20, 2019

Chairwoman Christy McCormick
Vice Chair Benjamin Hovland
Commissioner Donald Palmer
Commissioner Thomas Hicks
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Dear Commissioners:

We write to express ongoing concerns about the management of the Election Assistance Commission (EAC) under Executive Director Brian Newby and to urge you to begin the process immediately for selecting a new executive director.

The EAC is the only federal agency whose sole mission is to improve the administration of American elections. With the increased threat to our democratic processes, it is the duty of Congress to ensure that the EAC is able to carry out its mission to the highest standards. Recent news reports have highlighted serious management issues at the EAC. These reports are unacceptable, and we strongly urge you to take action to ensure that the Commission has a competent and strong executive director at the helm.

One recent media report noted that Mr. Newby “blocked important work on election security, micromanaged employees’ interactions with partners outside the agency and routinely ignored staff questions.” These reports further indicate that Mr. Newby has directed staff to stop working on cybersecurity best practices and actively prevented staff from participating in election security events, such as conferences, panels, and training sessions. This behavior would be inexcusable for any public servant, but it causes particular alarm that these reports are associated with the individual tasked with managing an agency critical to the administration and integrity of our elections.

Beyond Mr. Newby’s questionable conduct, we continue to have serious concerns about his judgement. In February 2016, Mr. Newby unilaterally reversed EAC precedent and approved requests from three states to add a citizenship question to their voter registration forms. Mr. Newby’s decision resulted in several lawsuits, and that litigation remains ongoing. Mr. Newby’s actions related to the approval of a citizenship question were condemned by one Commissioner as “contradict[ing] policy and precedent,” and they created significant controversy for the agency and caused the agency to lose credibility with numerous election officials.¹

¹ Danielle Lang & Sandhya Bathija, How One Election Official Has Tried to Change Voting Requirements in Three States Overnight, CLC (Feb. 1, 2016) <https://campaignlegal.org/update/how-one-election-official-has-tried-change-voting-requirements-three-states-overnight>.

The EAC plays a crucial role in helping to protect our elections and their integrity. As our intelligence officials continue to sound the alarm about future threats, it is vital that the EAC operate at full capacity. State and local election officials and the American people deserve an executive director who effectively manages the agency and is free from controversy.

During the EAC oversight hearing at the Committee on House Administration, Chairwoman McCormick indicated she would not begin an executive director search formally or informally due to her belief that, under the Help America Vote Act (HAVA) of 2002, a search may not commence until a vacancy occurs in the executive director position. However, this is not a comprehensive reading of options under HAVA. HAVA Section 204(a)(3)(B) clearly states that “the Commission shall consider the nominees recommended by the Standards Board and the Board of Advisors in appointing the Executive Director.” It does not require that the individual be selected from among those names only; it solely requires that they be considered. The search committees of the advisory boards are thus detailed as one approved method for searching for an executive director, but it is not the only approved method, and an alternate search method is nowhere expressly prohibited. Further, as a generally accepted legal principle, the requirement of one method, absent more, does not prohibit the usage of any alternative methods. Critically, the Commission and the Board of Advisors and Standards Board are nowhere prohibited from beginning an informal or formal search immediately.

For these reasons, we respectfully urge you to begin the process immediately for selecting an Executive Director to take over upon Mr. Newby’s term ending this November. As we approach the 2020 elections, it is vital that the EAC experiences a smooth transition in leadership and that no key position is left vacant.

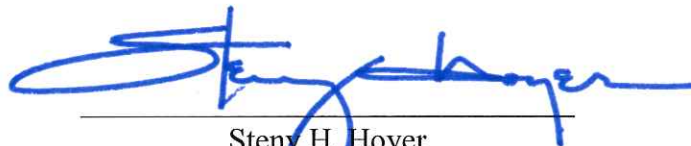
Thank you for your serious attention to this matter.



Amy Klobuchar
Ranking Member
Senate Committee on Rules and Administration



Zoe Lofgren
Chairperson
Committee on House Administration



Steny H. Hoyer
Majority Leader