

Brennan Center Calls for Greater Transparency and Accountability of
U.S. Election Assistance Commission

Last week, the U.S. Election Assistance Commission (EAC) announced that it will review its internal processes for releasing research and reports to the public and for awarding research contracts, and yesterday it asked its inspector general to review its procedures. We hope that these announcements signal the agency's willingness to embrace greater transparency and public accountability—qualities that have been lacking from many of its operations to date.

The EAC's announcements come on the heels of intense pressure from the Brennan Center and other advocates, members of Congress, and the media for the EAC to release two reports on important voting issues that the agency had commissioned from expert consultants with taxpayer dollars: a report on voter identification, and a report on voting fraud and voter intimidation. Despite the fact that both reports were completed by the summer of 2006, the EAC did not release the voter identification report until March 30, 2007, and it has never released the voting fraud and voter intimidation report (the latter report, however, was leaked to the *New York Times* last week).¹ The Brennan Center had requested both reports in October 2006 under the Freedom of Information Act (FOIA), but the EAC denied our request and our subsequent appeal.

The Brennan Center has consistently denounced the EAC's decision to suppress or delay the release of these expert reports. There is simply no legitimate reason for a public agency to withhold research on matters of public concern, particularly in this instance, when the research was commissioned with taxpayer dollars from established experts in the field pursuant to a statutory mandate that the agency make studies on election administration issues available to public. The duty to disclose is especially strong with respect to a public agency whose primary purpose is to serve as "a national clearinghouse and resource" on election administration information and procedures.

Worse yet, the EAC withheld these reports at a critical time when the issues addressed in the reports were the subjects of debate and decisions at all levels of government. During the period in which the reports were suppressed, the legislatures of more than half of the states considered and voted on bills to impose more restrictive voter ID requirements on citizens; a number of federal and state courts – including the United States Supreme Court – heard and decided lawsuits challenging restrictive voter ID laws; and the U.S. House of Representatives debated and passed a bill that would have imposed requirements on all voters. All of these debates and decisions took place without the benefit of the reports' findings on the significant impact of voter ID laws in reducing voter turnout and the low prevalence of the kind of voter fraud targeted by ID laws.

¹ The EAC did, however, produce its own report on election crimes based in part on the consultants' research.

As the EAC reconsiders its internal processes, we urge it to adopt the following recommendations designed to increase the transparency of the agency's research operations, to bring the EAC's practices in line with generally accepted research protocols and methods, to promote greater confidence in the EAC's processes, and to enhance its public legitimacy.

- The EAC should solicit and publish public input on its research agenda and priorities.
- The EAC should develop and publish uniform policies and procedures for selecting research contractors, entering into research contracts, and managing research projects. The policies and procedures should be designed to foster research on election administration issues; to ensure that such research is timely and useful for voters, election administrators, and the public; to promote research that uses sound methodology; and to ensure the greatest possible transparency, predictability, and accountability of the EAC's decision-making processes.
- The EAC should make all the research it commissions available to the public. It should do so without unreasonable delay.
- The EAC should not censor or modify outside research in any way, even if it is dissatisfied with the methodology or the findings. The EAC is free to adopt or decline to adopt, in whole or in part, the findings and conclusions of outside researchers. It should not alter those findings or conclusions when it releases the research.
- If the EAC decides to adopt or to reject the findings or conclusions of outside research, it should do so by a public vote, with advance public notice. The EAC need not specifically adopt or reject the research; it can release the research without comment or attribution to the agency.
- The EAC should not use any political litmus test for selecting the researchers with whom it contracts. The researchers should be judged on the quality of their proposals and their research, not on their actual or perceived political leanings.
- The EAC's research contracts should not in any way prohibit researchers from discussing their research or findings within a reasonable time after they complete their research.
- The EAC should oversee its outside research contracts so as to foster independent and peer-reviewed research rather than to design, plan, and manage the studies or research projects. Nor should the EAC place unreasonable restrictions on researchers or prevent them from drawing conclusions based on their research.
- The EAC should not refuse to sponsor or withdraw its support from any research project because of the potential political consequences of the research findings or conclusions. The goal of research should be increased knowledge and information about election administration issues.
- The EAC should encourage peer review of the research it commissions after the research is released. It can also seek independent review prior to initiating research.

The Brennan Center looks forward to working with the EAC to reform its practices to better realize its statutory mandate of fostering research on election administration issues and serving as an election information clearinghouse. For more information, please contact Wendy Weiser at wendy.weiser@nyu.edu or Myrna Perez at myrna.perez@nyu.edu.