

*Whereas*, the Acting Director of the Election Assistance Commission (EAC) has issued an internal memo formally requesting the Standards Board and Board of Advisors to not conduct official business, and

*Whereas*, the National Association of State Election Directors believes the Standards Board and Board of Advisors to be essential to the continued development of standards for election administration,

*Be it therefore resolved that,*

The National Association of State Election Directors formally requests the Acting Director of the Election Assistance Commission reconsider his actions in the memo dated January 27, 2012, in which he formally requested the Standards Board and Board of Advisors not to conduct official business based on the following:

The Standards Board and Board of Advisors are creations of Congress and not the Election Assistance Commission. Further, there is nothing in Federal Advisory Committee Act (FACA) that prevents the EAC from appointing a Designated Federal Officer (DFO).

As Congressionally created statutory bodies, with membership specified by law rather than by rules or regulations of the EAC, we believe it is necessary for the bodies to be able to continue their roles and responsibilities even if the EAC operates for a time without a full Commission.

To the best of our knowledge, there is no requirement in FACA that prevents the staff of the EAC from acting as a DFO if a court were to determine that FACA is a consideration for the continued operation of the Standards Board and the Advisory Board.

While we respect the internal memos of the EAC for its own operations as a guideline, in this instance we believe the work of the enumerated Boards should not be constrained by errors of omission of the Commission to name DFOs by its procedures.

Since the Help America Vote Act was somewhat unique in the passage of Federal legislation, these advisory Boards were not the creation of the EAC itself. Since the EAC cannot name the members of the Boards and that Federal law controls who can be named to serve, and since the EAC cannot appoint replacements on its own to the Boards, we believe the Boards operate at the higher statutory level rather than at an agency procedures level.

Additionally, continued drafting of proposed voting system standards by the Technical Guidelines Development Committee without the input of state and local government election officials who serve on the Standards Board and the Board of Advisors, would be contrary to the intent of the Help America Vote Act.

We recognize that the Boards offer advice which may or may not be followed by the Commission or its staff, but the Boards are intended to share the experience and expertise of election professionals and community stakeholders to further the work which was assigned to the Commission by Congress. It is our belief that Congress fully intended the essential input of state and local governments as a necessary review of proposed Federal policy related to election administration.

The Roles and Responsibilities Policy created by the EAC does not have the force of law and therefore does not trump Federal law to essentially discard the two statutory bodies.

The National Association of State Election Directors (NASED), therefore calls upon the Executive Director/General Counsel to reconsider his opinion and to consider this alternate opinion so that the important work of the Boards can continue unimpeded.

The Secretary of NASED is directed to send a copy of this resolution to the following:

- The Acting Executive Director of the EAC
- The Chief Operating Officer of the EAC
- The Standards Board (members)
- The Board of Advisors (members)
- The US Senate Committee on Rules and Administration
- The US House Committee on House Administration
- The National Association of Secretaries of State (NASS)
- The members of the Technical Guidelines Development Committee (TGDC)

Adopted in session 1/28/12