

June 20, 2007

BY FACSIMILE AND U.S. MAIL

Gavin S. Gilmour, Esq.
Deputy General Counsel
U.S. Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, D.C. 20005

Re: Voting Fraud and Voter Intimidation Project

Dear Mr. Gilmour:

Thank you for your letter dated June 14, 2007. First, we would like to express our disappointment that it took the Election Assistance Commission (“EAC”) over two months to respond to our request for clarification of Ms. Wang’s ability to speak publicly and to Congress about her work for the EAC. As set forth below, even after over two months, your response is still incomplete, inaccurate and misleading.

You state numerous times that Ms. Wang was an employee of the EAC. Ms. Wang was not an employee. Under 5 C.F.R. section 304, she was retained as a consultant, which creates a “limited employment relationship,” as stated in her contract with the EAC. Ms. Wang received a Form 1099, and not a Form W-2, as she would have if she were an employee. You also state that it is “exceptional” that Ms. Wang would request “*carte blanche* authority to speak on behalf of the agency.” As you well know, Ms. Wang never requested the authority — *carte blanche* or otherwise — to “speak on behalf of the agency.” She requested clarification of her ability to discuss her own research or conclusions regarding the voting fraud and voter intimidation project. She never said she wanted to speak on behalf of the agency. In fact, she is attempting to clarify the information the EAC has released.

On May 18, 2007, the EAC responded to a request for information by the Senate Rules and Administration Committee and later made public documents relating to this request. The EAC’s response to the Committee contains a number of inaccurate and misleading descriptions of sections of the draft report submitted by Ms. Wang and Job Serebrov and the process by which it was created. Moreover, it fails to describe accurately the near-constant interaction between Ms. Wang and Mr. Serebrov, on the one hand, and EAC staff, on the other, during the project. The EAC also fails to provide

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complete information to the Committee about the EAC's instructions and comments to Ms. Wang and Mr. Serebrov during the pendency of their project. One example of the incomplete information the EAC provided to Congress is, in your discussion of the scope and requirements of the draft report, your failure to explain that no one associated with the EAC ever told Ms. Wang that she and Mr. Serebrov were going beyond the scope of the project or failing to meet the requirements of the project. You also do not advise the Committee that, after the draft report was submitted in July 2006, EAC staff flatly refused Ms. Wang's numerous offers to work (without additional compensation) with the EAC on addressing any concerns about the draft report raised by the EAC, the Department of Justice or others.

The EAC's letter responding to Ms. Wang's request is even more misleading if put it in context. I spoke to the EAC's General Counsel, Juliet Hodgkins, earlier in the day on June 14, 2007. In that conversation, Ms. Hodgkins refused to answer my very simple question — if Ms. Wang receives a request from members of Congress or Congressional staff members about her work for the EAC, is she able to respond fully to their requests without having to verify that the EAC has discussed publicly the specific information requested by Congress and without being sued for breach of contract? Ms. Hodgkins simply responded, repeatedly, that the EAC takes very seriously the terms of its contract and will “vigorously enforce” the confidentiality provision in its agreement with Ms. Wang. I request, again, a simple yes or no response to the questions Ms. Hodgkins refused to answer on the phone last week.

Where does this leave us? You state in its June 14, 2007 letter that “Ms. Wang is free to discuss public matters as she wishes.” You also state that the EAC has made public all Voter Fraud and Intimidation Project documents, noting that the agency is waiving all privileges associated with this project. We assume that this is an accurate statement and that the EAC has not selectively provided certain documents to the Committee, while holding back other relevant materials without providing a privilege log describing the documents withheld. Taking the EAC's statements to the Committee at face value, all of the work Ms. Wang provided to the EAC should have been made public. Ms. Wang, therefore, should be free to discuss her work for the EAC on this project, as long as she makes clear that she is speaking on her own behalf and not on behalf of the agency. If you disagree with this conclusion, please respond to me in writing as soon as possible.

My conversation with Ms. Hodgkins leaves me with the distinct impression that the EAC is engaging in a game of “gottcha,” refusing to explain its position on

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Ms. Wang's ability to discuss matters made public by the EAC, while noting, in a threatening manner, that the EAC will fully enforce its contract rights. The EAC cannot say publicly that it is releasing all information regarding the Voter Fraud and Intimidation Project, yet refuse to let Ms. Wang discuss her work, when she has relevant clarifying information that she previously provided to the EAC. If, on the other hand, the EAC has not made all relevant documents and materials public, it should come clean, state that fact clearly and explain why it is only releasing selective documents.

Sincerely,



James P. Joseph

cc: Senator Dianne Feinstein,
Chair, Senate Rules Committee