



Paul DeGregorio /EAC/GOV
08/30/2005 10:33 AM

To "Hans.von.Spakovsky@usdoj.gov"
<Hans.von.Spakovsky@usdoj.gov>@GSAEXTERNAL
cc
bcc

Subject Re: e-mail from Jack Bartling

Hans,

First of all, I do not agree to "deals," especially when it comes to an interpretation of the law. What I did tell you at the time that we discussed this issue was that a plan was already in the works for us to correct our position on the checkbox issue regarding our best practices, and that we would do so when we do another reiteration of our best practices documents. There was no deal to do so immediately. To my knowledge this delay has nothing to do with our Chairman--at least she has never said anything to what you have suggested in your e-mail to me.

The letter from our assistant General Counsel was not a "threat". It is, in fact, a courtesy we are extending to DOJ, since our positions are currently different on this issue. Had DOJ extended the same courtesy to us back when you sent your original letter to AZ, perhaps we would not be in this position. I believe that our staff has taken great pains to have good communications with DOJ on HAVA issues, and that DOJ has not extended to the EAC the same level of courtesy or communication. Perhaps a discussion with John Tanner or his boss is in order.

To assure you that I am not being "railroaded" by anyone on this Commission, I thought I would share the attached internal memos with you regarding the Eagleton contract and others, so that you can see for yourself that I take my job seriously and work to insure that we are getting proper balance in the work that



we receive. Since they are internal, they are for your eyes only. August 19 memo regarding Eagleton.doc



Council on Government proposal.doc

Commissioner Davidson and I will call you at 4 PM, as previously arranged.

Paul DeGregorio
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"Hans.von.Spakovsky@usdoj.gov"
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To "pdegregorio@eac.gov" <pdegregorio@eac.gov>
cc



08/30/2005 08:32 AM

Subject Re: e-mail from Jack Bartling

You and I should talk before any official call. We did not agree that your position was correct. If you will recall, we had a deal where I told you we would consider taking the position you were pushing even though we think it is too strict if you would correct the obviously wrong position on the citizenship checkbox. You agreed to that. However, instead of contacting me and telling me you are pulling out of the deal, I get an email from your assistant counsel threatening DOJ with this letter - with nothing about the citizenship issue. Are you aware that the Arizona AG, SOS, and governor have finally agreed on how to implement the ID rules? Your letter will blow that agreement out of the water. You and I are obviously both angry about this. I suggest a quick phonecall this morning to see if there has been some kind of miscommunication here. The fact that your chairman does not want to do this because she does not want to anger her friends at the league of women voters is no reason for you to be railroaded into this.

-----Original Message-----

From: pdegregorio@eac.gov <pdegregorio@eac.gov>
To: von Spakovsky, Hans (CRT) <Hans.VonSpakovsky@crt.usdoj.gov>
Sent: Mon Aug 29 22:58:26 2005
Subject: e-mail from Jack Bartling

Hans,

Is the e-mail below from Jack Bartling a product of some phone calls you have made regarding the AZ case? Is it an attempt by you to put pressure on me--and the EAC? If so, I do not appreciate it. As you may know, Donetta and I have scheduled a telephone call with you on Tuesday afternoon to discuss this issue. You are well aware our legal staff has done considerable research on this issue and, if I recall correctly, you told me and Julie Thompson several weeks ago that our position that HAVA requires a state to give someone a provisional ballot, even if they do not show an ID when requesting the provisional ballot, was the correct legal position and HAVA interpretation. You also indicated that the previous DOJ position on this issue was to be withdrawn. We have given Arizona and DOJ all summer to act on this issue to correct the previous position they have taken so that there would not be conflicting interpretations of HAVA by two federal agencies. To me HAVA is very clear on this issue. Our interpretation is a strict interpretation of HAVA. No more--no less. Our opinion also makes its very clear that if a state wants to require an ID for a provisional to be counted, it has every right to do so. If it is you who have contacted Jack, I'm disappointed that you feel you have to resort to this kind of tactics to get us to change our mind. I don't appreciate it. Perhaps if DOJ would have shared their AZ letter with us prior to it being sent, we would not be in this situation.

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----- Forwarded by Paul DeGregorio/EAC/GOV on 08/29/2005 10:37 PM -----

"Bartling, Jack (Bond)" <Jack_Bartling@bond.senate.gov>
08/29/2005 10:25 PM

To
pdegregorio@eac.gov
cc

Subject

Paul,

Just heard the EAC is seriously considering taking a position against DOJ on the Arizona issue. Didn't the parties reach a political compromise agreement?

Nonetheless, certainly seems DOJ has it right. What is going on with this?

Jack

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)



"Hans.von.Spakovsky@usdoj.
gov"
<Hans.von.Spakovsky@usdoj.
gov>

08/18/2005 03:40 PM

To "jthompson@eac.gov" <jthompson@eac.gov>,
"ddavidson@eac.gov" <ddavidson@eac.gov>,
"twilke@eac.gov" <twilke@eac.gov>,
cc "tjsthree@msn.com" <tjsthree@msn.com>,
"christophert@michigan.gov"
<christophert@michigan.gov>, "dlewis@electioncenter.org"

bcc

Subject Research Contracts

Dear Commissioners:

At the meeting of the Board of Advisors in Portland, Oregon, our notebooks included an EAC Information Research Update, dated July 18, 2005. The Update indicates that the EAC has awarded a contract to the Eagleton Institute / Moritz College of Law ("Moritz") to conduct research into "Provisional Voting / ID Requirements."

Obviously, the duty of the EAC as outlined in Section 241 to conduct research on election issues is a very important one. That is why it is clearly an absolute necessity that the researchers who are awarded contracts to conduct that research be objective and nonpartisan in their work. It would be inappropriate and potentially very damaging and embarrassing to the EAC (and the Board of Advisors) if this research is conducted by entities that have a preconceived opinion or bias on the issue being researched or are, in fact, advocates on the issue. Any findings or recommendations such biased entities put in their final report would be open to question and could cause great harm.

Unfortunately, hiring the faculty at Moritz to conduct research on provisional balloting and voter identification provisions calls into question whether the research can be conducted in an objective manner and reach conclusions that are not pre-determined by the public and pre-existing views of the researchers. This is crystal clear from an easily-conducted review of the Moritz website.

The Associate Director of the Election Law program at Moritz, Daniel Tokaji, is an outspoken opponent of voter identification requirements and commentator on provisional voting. Here is a brief summary of some of his recent comments, taken from the Moritz website:

It's therefore questionable at best whether an ID requirement is really necessary to combat voting fraud. Supporters of the ID requirement have yet to make a convincing case that existing methods of discouraging and punishing fraud are insufficient. While the anti-fraud benefits of stricter ID laws are dubious, there is evidence that an ID requirement would impose a severe burden on many voters, particularly those of low income....In their present form, the ID bills presently on the table are likely unconstitutional.... (ID and the Right to Vote, April 12, 2005)

"Ohio's election reform is a mixed bag. Establishing a clear rule for provisional ballots is a good idea, but I don't think there's a good reason for refusing to count provisional ballots cast out of precinct, given that a statewide registration database (which should allow for easy verification of eligibility) has to be in place by 2006. It would be much better to move to in-precinct early voting than mail-in absentee voting, but it seems that Ohio doesn't want to spend the money." (Reform Comes to Ohio, May 20, 2005).

"Nevertheless, DOJ seems likely to sign off on this [Arizona's proposition 200

implementing rules], given that they've take the position - quite clearly an erroneous one, in my view - that voters need not even be given a provisional ballot if they lack ID." (Arizona Voter ID, July 18, 2005).

"It remains to be seen, of course, whether DOJ will rigorously enforce Section 5 of the Voting Rights Act, when it comes to practices - like the Georgia ID law - that threaten to result in the denial of minority votes...." (Preclearance, Preclearance, Preclearance, July 20, 2005).

"...I tend to doubt that the preclearance process will prove to be an effective remedy for measures like the Georgia ID law. Even though this law will have a "retrogressive" effect, by serving as a barrier to minority voters' participation...." (The Voting Rights Act, Then and Now, July 31, 2005)

"We should remember that, at the turn of the 20th Century, allegations of "good government" were used by white Democrats in a remarkably successful strategy to suppress the black vote. The result of those very successful efforts was to impose barriers like the literacy test, which excluded African Americans from voting throughout the South for the better part of the century, until after the Voting Rights Act of 1965. If you go back and read some of the documents from the late 1800's and early 1900's, as I've recently been doing, the similarity to the sort of arguments being advanced now in support of photo ID laws is frightening. It is beyond unfortunate to see the same sort of tactics, albeit dressed up in more respectable garb, being employed at the start of the 21st Century." (Vote Suppression, Fraud and Voter ID, August 3, 2005)

In addition to these postings, Dr. Tokaji is acting as an advocate on voter identification issues, having submitted a comment letter to the Department of Justice dated August 18, 2005, along with a number of other professors, urging an objection to a voter identification provision currently before the Department for review under Section 5 of the Voting Rights Act. Obviously, this advocacy is occurring after the EAC awarded this contract and during the pendency of the research work.

The issue here is not whether Dr. Tokaji's opinions are correct or incorrect, or the appropriateness of his submitting a comment letter to the Department of Justice. The point is the strongly held, pre-existing notions about both provisional balloting and voter identification espoused by the Associate Director of Moritz's election law program and his advocacy on these issues. This raises serious concerns about the propriety of Moritz being provided with federal tax dollars to conduct non-partisan and impartial research into such a sensitive and high profile area of election law. We cannot be certain that data collected and conclusions reached by this research project will not be predetermined to comport with the views of Moritz's officials.

I would strongly recommend that this contract be reconsidered by the EAC. Under these circumstances, any report issued by Moritz will be open to serious questions as to its validity and objectivity.

Hans A. von Spakovsky
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