

The Atlantic

The Federal Voting Agency Republicans Want to Kill

GOP lawmakers argue the Election Assistance Commission, created in 2002, has outlived its usefulness. Democrats say that in the age of hacking, it's needed now more than ever.

[Russell Berman](#)

Feb 13, 2017

Every odd-numbered year since 2011, Republicans in the House have tried to kill the Election Assistance Commission—the tiny federal agency responsible for helping states improve their voting systems. None of their previous efforts made it very far, and with Barack Obama in the White House, the 15-year-old commission had little to fear.

This year, the same fight has taken on much greater urgency.

Congressional committees are [investigating](#) whether a foreign power tried to hack the U.S. election. The new president is convinced that widespread fraud cost him millions of votes. And with an ally in the Oval Office, House Republicans have begun moving faster than ever before to eliminate an agency they say is unnecessary and wastes taxpayer money.

“I’m more worried this time,” said Wendy Weiser, the director of the democracy program at the Brennan Center for Justice. “There’s a belief that this has more legs than it did in the past.”

The House Administration Committee has a new chairman, Representative Gregg Harper of Mississippi, who has led the opposition to the EAC, and last week the panel made [his bill](#) ending the agency the first piece of legislation it approved in the new Congress. “It is my firm belief that the EAC has outlived its usefulness and purpose,” Harper said shortly before the committee’s six Republicans voted down objections from its three Democrats to approve the legislation.

The Election Assistance Commission came into existence as part of the Help America Vote Act of 2002, the law that Congress passed to aid states in modernizing their elections following the widespread problems reported during the 2000 presidential balloting. The independent, bipartisan agency was tasked first with distributing \$3.1 billion in federal funds to states updating their voting machines. Its ongoing responsibilities include providing guidance to states on federal election law, maintaining the national voter registration form, and certifying voting machines and testing labs for new machines.

Harper has argued that the EAC was always intended to be temporary and that with the money earmarked for states now out the door, its remaining functions can be assigned to the Federal

Election Commission. “The EAC does not register voters, it does not conduct recounts, nor does it have any enforcement authority over laws governing voter registration or anything else essential to the operation of our elections,” he said in a statement. “Bottom line, the agency does not administer elections, and the time to eliminate the EAC has come.” In the same hearing last week, Harper’s committee voted to do away with the program providing matching funds for presidential candidates, which no major-party nominee has used since 2008.

“It is my firm belief that the EAC has outlived its usefulness and purpose.”

As a budget-cutting measure, scrapping the EAC would be roughly akin to a household deciding to forgo two-ply toilet paper in favor of the flimsier variety for a few months. Congress appropriated just \$8 million to the commission in the last fiscal year—about a third of what the agency used to receive and a minuscule fraction of the \$3.54 trillion federal budget in 2016. Republicans say it’s a good place to start, but Democratic defenders of the EAC argue that despite its small footprint, the commission serves important functions and that it’s especially foolhardy to get rid of it at a time of heightened concerns about the integrity of U.S. elections. “This is the time when we should be focusing on strengthening the only federal agency charged with making elections work for all Americans, not trying to eliminate it,” said Representative Robert Brady of Pennsylvania, the top Democrat on the House Administration Committee.

The EAC went fallow for a few years when the Senate stalled in confirming new commissioners, a period that delayed the introduction of new voting machines in some states because the agency could not approve new guidelines. Now housed outside Washington in a small suite of offices in suburban Maryland, the EAC is waging a public battle for its very existence. The commission’s chairman, Thomas Hicks, issued a statement denouncing the GOP move to eliminate the EAC as being “seriously out of step with the current U.S. election landscape.” And in a subsequent phone interview, Hicks noted that among its other activities during the 2016 election, the agency had provided critical guidance to states seeking to bolster their systems against the threat of cyberattack.

In the interview, Hicks responded to Harper’s criticism of the EAC’s relevance by comparing its unheralded work to a city sanitation department that clears the streets after a snowstorm. “If you don’t notice it,” Hicks said, “that means we’re doing our job.”

Yet the EAC’s work hasn’t always gone unnoticed, and last year it found itself at war with its closest allies over a decision that inserted the commission into the complicated national politics of voter ID laws. One of the agency’s few regulatory powers is to approve the language of the federal voter registration applicants that states send out to their residents. Since 2002, the EAC’s commissioners have rejected attempts by certain states to demand proof of citizenship as part of the form’s instructions. But without the knowledge of the agency’s three current commissioners, last year the EAC’s executive director, Brian Newby, acted unilaterally to grant requests from elections officials in Kansas, Georgia, and Alabama to send out registration forms requiring proof of citizenship. Newby’s decision prompted a lawsuit from voting-rights groups and an angry rebuke from congressional Democrats, who wrote in a letter that the change “may already have impaired the legitimate right to vote of many Americans.”

Newby claimed that because it was an administrative matter, he had the authority to make the decision himself. But EAC commissioners, including Hicks, disagreed, and the Justice Department [declined to defend](#) the decision in court. The case is still pending.

For now, organizations like the Brennan Center are in the awkward position of suing the EAC in court while fighting for its survival before Congress. The twin battles are not inconsistent, Weiser said. While Newby's decision allowing a proof-of-citizenship requirement was "a dramatic misstep," she said, "that doesn't mean we don't support the continued existence of the EAC."

Weiser noted that last year, 42 states were using voting machines that were more than a decade old, which is close to their expiration date and makes them more vulnerable to hacking. "We are in a state of emergency nationally with respect to our voting machines," she told me.

GOP attempts to eliminate the Election Assistance Commission have passed out of committee but not made it to the House floor for a vote in the last four years. Spokesmen for House Majority Leader Kevin McCarthy wouldn't say whether that would change this time. While voting-rights organizations have come out against the bill, the National Association of Secretaries of States narrowly approved a resolution in 2015 calling on Congress not to reauthorize or fund the EAC. That message emerged out of concerns about the commission "eventually evolving into a regulatory body" and encroaching on the authority of individual states to run their own elections. With secretaries of state set to gather in Washington D.C. this week for an annual conference, the EAC is likely to be a topic of discussion, a spokeswoman for the association said.

With Trump as president and the agency mired in a court battle, Weiser and other advocates are worried it is newly vulnerable to a quick strike in Congress. "The environment is such," Weiser said, "that a lot of House Republicans are emboldened to push through anti-democratic and anti-oversight measures." At the commission itself, Hicks said they were hopeful of maintaining the support from Democrats that has kept the agency afloat the last several years. "There's always a concern," he said. "As long as we're here, we're going to continue to do the job."