

**APPENDIX C: PROVISIONAL BALLOT LITIGATION BY ISSUE**

**Moritz College of Law  
June 28, 2006**

## Overview:

- **Wrong precinct**
  - *League of Latin American Citizens (LULAC) v. Arizona Secretary of State Jan Brewer*
  - *Colorado Common Cause v. Donetta Davidson*, No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004)
  - *AFL-CIO v. Hood*, 885 So. 2d 373 (Fla. 2004)
  - *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073 (N.D. Fla. 2004)
  - *Dean Brooks et al. v. Attorney General Tom Miller*
  - *Bay County Democratic Party, et al v. Land et al*, 347 F. Supp. 2d 404 (E.D. Mich. 2004)
  - *Claude Hawkins, Brian Morahan, Susan Schilling and the Missouri Democratic Party v. Matt Blunt*  
U.S. District Court Western District of Missouri, Case No. 2:04-cv-04177
  - *Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)
  - *James v. Bartlet*, 607 S.E. 2d 638, 359 N.C. 260 (N.C. 2005)
  - *The League of Women Voters of Ohio et al v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004)
  - *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004) – *Opinion in Sixth Circuit case, 10/23/04*  
*Sandusky County Democratic Party v. Blackwell*, 361 F. Supp. 2d 688 (6th Cir. 2005) – *Opinion in District Court in Plaintiff's request for attorney's fees, which was granted, 3/3/05*
  - *State of Ohio ex rel. Mackey et al v. Blackwell et al*, No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)
- **Absentee voters who did not receive a ballot who wish to vote provisionally**
  - *Colorado Common Cause v. Donetta Davidson*, No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004)
  - *White v. Blackwell, et al.*  
U.S. District Court for the Northern District of Ohio, Case No. 3:04CV 7689
- **Equal protection – inconsistent treatment or distribution of provisional ballots**
  - *Schering v. Blackwell*  
U.S. District Court for the Southern District of Ohio, Case No. 1:04-cv-755.
  - *State of Ohio ex rel. Mackey et al v. Blackwell et al*, No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)
- **Provisional ballots which were incomplete in some way (not signed, do not display election district, etc.)**
  - *Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)
  - *Borders v. King County*  
Superior Court, Chelan County, No. 05-2-00027-3
- **Requirement for provisional ballot to be counted – ID required**

- *Bay County Democratic Party, et al v. Land et al*, 347 F. Supp. 2d 404 (E.D. Mich. 2004)
- *The League of Women Voters of Ohio et al v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004)
- **Verification procedure for provisional ballots**
  - *State of Ohio ex rel. Mackey et al v. Blackwell et al*, No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)
  - *Borders v. King County*  
Superior Court, Chelan County, No. 05-2-00027-3
  - *McDonald, et al v. Secretary of State*, 103 P.3d 722 (Wash. 2004)
  - *Washington State Democratic Party v. King County Records, Elections & Licensing Services Division*  
Superior Court, King County, 04-2-36048-0 SEA
- **Provisional v. regular ballot for voter who properly registered but was left off election rolls**
  - *Citizens Alliance for Secure Elections v. Michael Vu*  
U.S. District Court for the Northern District of Ohio, Case No. 1:04CV2147
- **Voters who have moved and not updated their registration**
  - *Citizens Alliance for Secure Elections v. Michael Vu*  
U.S. District Court for the Northern District of Ohio, Case No. 1:04CV2147
- **Provisional ballots cast by voters who claimed that someone else voted in their place and signed precinct record**
  - *Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)
- **Disclosure to a political party of provisional votes in danger of being rejected**
  - *Washington State Democratic Party v. King County Records, Elections & Licensing Services Division*  
Superior Court, King County, 04-2-36048-0 SEA
- **Provisional ballots incorrectly tabulated with regular ballots**
  - *Borders v. King County*  
Superior Court, Chelan County, No. 05-2-00027-3
- **Re-canvassing ballots previously rejected**
  - *McDonald, et al v. Secretary of State*, 103 P.3d 722 (Wash. 2004)
  - *Washington State Republican Party v. King County Division of Records*, 103 P.3d 725 (Wash. 2004)

## Full Summaries:

### Wrong Precinct

- ***League of Latin American Citizens (LULAC) v. Arizona Secretary of State Jan Brewer***
  - ISSUE: wrong precinct
    - Lawsuit claims Arizona state policy to not count provisional ballots that were cast in the wrong precinct violates HAVA and the Equal Protection Clause of the 14<sup>th</sup> Amendment. Electionline.org – Litigation Summary (Feb. 14, 2005), <http://www.electionline.org/Portals/1/Publications/litigation.update.Feb.14.05.pdf>.
  - RESULT: N/A
  - RATIONALE: N/A
- ***Colorado Common Cause v. Donetta Davidson, No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004)***
  - ISSUE: wrong precinct; absentee voters getting provisional ballots
    - Lawsuit challenges a state guideline that prohibits anyone voting in the wrong precinct from casting a ballot in any race but the presidential election based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at \*1.
    - Challenges state guideline that provisional ballots will not be counted if the voter applied for an absentee ballot based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at \*1.
  - RESULT: votes cast in the wrong precinct may only count for president and vice president; provisional votes cast by voters who applied for absentee ballots must be counted.
  - RATIONALE:
    - Court felt that Congress had no intent to eliminate precinct-based voting, a constitutional form of organizing voting; therefore, votes cast in the wrong precinct may not be counted for county-wide issues. 2004 WL 2360485, at \*11. Court also felt that the legislative history behind HAVA's passage supported this notion. *Id.*
    - Court felt that requiring voters to vote in the correct precinct is not an unconstitutional infringement on the right to vote. 2004 WL 2360485, at \*14. The impact of the requirement is further lessened by the fact that poll workers will direct the voter to the correct precinct. *Id.* In addition, the Court felt that there was a compelling interest in preventing voter fraud furthered by the precinct system. *Id.*
      - The Court left the door open to the possibility that state-wide voting may be possible after a state-wide computerized database is established in 2006. *Id.*
    - Court felt that not allowing voters who requested an absentee ballot to vote provisionally would conflict with the purpose of HAVA to ensure that registered and eligible voters are allowed to vote provisionally. 2004 WL 2360485, at \*11, 12.

- ***AFL-CIO v. Hood*, 885 So. 2d 373 (Fla. 2004)**
  - ISSUE: wrong precinct
    - Lawsuit claimed that the precinct system was an unnecessary and unconstitutional infringement on the right to vote under the Florida and U.S. Constitutions. 885 So.2d at 374.
  - RESULT: votes cast in the wrong precinct may be rejected and not counted.
  - RATIONALE: Precinct based system is a regulation of the voting process not a qualification placed on the voter and could have been reasonably deemed necessary to protect the integrity of the voting process. 885 So.2d at 376.
- ***The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073 (N.D. Fla. 2004)**
  - ISSUE: wrong precinct
    - Right to provisional ballot if in the wrong precinct (conceded by Florida prior to Order Granting Preliminary Injunction)
    - Right for vote to be counted if cast in the wrong precinct based on interpretation of HAVA language.
    - 342 F. Supp. 2d at 1074.
  - RESULT: voters in the wrong precinct are entitled to a provisional ballot, but are not entitled to have that vote counted if cast in the wrong precinct. 342 F. Supp. 2d at 1083.
  - RATIONALE:
    - Reading the statute to mean that a voter must be eligible at that polling place is consistent with HAVA’s purpose, to allow voters to vote when they appear at the polling place, not to eliminate precinct voting. 342 F. Supp. 2d at 1079.
    - Reading is also consistent with votes being counted “in accordance with State law.” 342 F. Supp. 2d at 1080.
    - Reading consistent with legislative history which says that poll workers should direct voters to the correct precinct not allow voters to vote at any polling site. 342 F. Supp. 2d at 1080.
    - “Eligible” in HAVA language means registered, 18 years of age, has lived in State for at least 30 days. 342 F. Supp. 2d at 1080.
    - HAVA intended to safeguard voter’s right to vote but allow state law to determine whether that vote counts. 342 F. Supp. 2d at 1080.
    - Because election workers may make mistakes with on-the-spot determinations of the voter’s polling place, a voter may not be denied a provisional ballot because an election official determined that he/she is at the wrong polling place. 342 F. Supp. 2d at 1081.
- ***Dean Brooks et al. v. Attorney General Tom Miller***
  - ISSUE: wrong precinct
    - Challenge Attorney General decision that votes cast in the correct county but wrong precinct should be counted for Congress and President and Vice President only. Electionline.org – Litigation Summary (Feb. 14, 2005), <http://www.electionline.org/Portals/1/Publications/litigation.update.Feb.14.05.pdf>.

- RESULT: N/A
- RATIONALE: N/A
- ***Bay County Democratic Party, et al v. Land et al, 347 F. Supp. 2d 404 (E.D. Mich. 2004)***
  - ISSUE: wrong precinct; identification requirement for ballot to count
    - Lawsuit challenges Secretary of State’s directive that votes cast in the wrong precinct but correct township, city, or village should not be counted based on HAVA. 347 F. Supp. 2d at 427-34.
    - Lawsuit challenges Secretary of State’s directive that first time voters should be required to provided identification within six days of election day in order for their votes to count under HAVA, the Fourteenth Amendment to the Constitution, Michigan election law, and the Equal Protection Clause of the Michigan Constitution. 347 F. Supp. 2d at 434-35.
  - RESULT [but later overruled by Sixth Circuit]: votes cast in the wrong precinct but correct city, village, or township should be counted; identification may be required of provisional voters after the election in order for their votes to count. 347 F. Supp. 2d at 438.
  - RATIONALE:
    - With regard to the wrong precinct issue, the Court relies on the District Court decision in *Sandusky County Democratic Party v. Blackwell*, 339 F. Supp. 2d 975, 992-93 (N.D. Ohio 2004). *Bay County*, 347 F. Supp. 2d at 431-32.
    - The Court also relies on the “plain language” of HAVA – votes are to be counted in accordance with state law (dictates the *procedure* of counting); whether or not votes are counted is decided under HAVA; votes under HAVA are counted if the voter is “eligible” to vote. 347 F. Supp. 2d at 431-32.
    - With regard to the identification requirement, the Court found that the requirement was reasonable; that preventing voter fraud is a compelling interest; and that the requirement is applied uniformly and in a nondiscriminatory manner. 347 F. Supp. 2d at 435.
  - **OVERRULED:** 6<sup>th</sup> Circuit ruled that votes in the wrong precinct should not be counted and interpreted “jurisdiction,” “eligible,” and the HAVA provision concerning provisional ballots differently. *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004).
- ***Claude Hawkins, Brian Morahan, Susan Schilling and the Missouri Democratic Party v. Matt Blunt***  
U.S. District Court Western District of Missouri, Case No. 2:04-cv-04177
  - ISSUE: wrong precinct
    - Plaintiffs claim that not counting provisional votes cast in the wrong precinct is in violation of HAVA (preemption argument). Order denying Plaintiffs' Motion for Summary Judgment, granting Defendants' Motion for Summary Judgment 3.
      - But the Secretary of State later decided to count those provisional ballots in which the voter was not directed to the

correct polling place, so this issue was considered moot.  
Order 11.

- Plaintiffs also disputed a provision of Missouri law which states that a voter should be directed to the correct polling place in lieu of receiving a provisional ballot. Order 10, 12. The provision has been interpreted to mean that if a voter refuses to go to the correct polling place, he shall be given a provisional ballot, which will not be counted (allege it is inconsistent with HAVA - preemption). Order 10, 12.
  - Allege that the Missouri law implementing HAVA “frustrates the intent” of HAVA. Order 13.
- Plaintiffs also allege that the Missouri law violates the Equal Protection Clause because the decision not to count ballots cast at an incorrect polling place is arbitrary. Order 21.
- RESULT: Provisional ballots cast in the wrong precinct should be thrown out provided that the voter was directed to correct precinct. Order.
- RATIONALE:
  - HAVA was intended to be flexible in the way in which states could implement it, evidenced by use of the phrase “eligible under state law to vote.” Order 14.
    - This reference to state law gives states the power to define voter qualifications for provisional ballots including where they can be cast in order to be counted. *Id.*
  - Court relies on statements of Sen. Bond and other HAVA supporters, stating that they did not intend to overturn State law regarding the jurisdiction in which a ballot must be cast and that poll workers should direct the voter to the correct polling place in the event of confusion. Order 15-16.
  - The laws do not violate the Equal Protection Clause because the goals and objectives of the precinct system are legitimate, and it guarantees those eligible to vote may do so. Order 22. The system is rationally related to ensuring a fair election. *Id.*
- ***Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)**
  - ISSUES: wrong precinct; voters who voted provisionally because other voters had signed poll ledger in their place; provisional ballots in which the envelope did not identify the election district of the voter
    - Claims all based on N.Y. election law – once case got to Supreme Court, no claims based on Constitution or HAVA.
  - RESULT:
    - Provisional votes in which the voter was in the correct polling place, but wrong district should be counted; voters in the wrong polling place and wrong district should not be counted. 4 N.Y. 3d at 128.
    - Provisional ballots cast by voters who claimed that another voter voted in his/her place and signed the precinct ledger should not be counted. 4 N.Y. 3d at 129.

- Provisional ballots in which the election district was not identified on the envelope should be counted. 4 N.Y. 3d at 129.
    - RATIONALE: provisional ballots should be counted if the ballots were in dispute only as a result of ministerial errors by the election board. 4 N.Y. 3d at 129.
      - Ballots cast in the correct polling place but wrong district were counted because they were assumed to be the result of ministerial error; the election officers should have directed the voter to the correct voting table. 4 N.Y. 3d at 128. Ballots cast in the wrong polling place and district were not counted because it would be unreasonable to require poll workers to ensure that voters are at the correct polling site. *Id.*
      - Provisional votes cast by voters who claimed another voter had voted in their place earlier were not counted because of the possibility of fraud. 4 N.Y. 3d at 129.
      - Provisional ballots lacking the election district on the envelope were counted because they were cast in the correct election district, and mishandling by election officials caused the ballots to become unidentifiable with a district (election officials placed post-it notes on the ballots containing the missing information, but the notes later fell off). 4 N.Y. 3d at 129.
    - DISPOSITION: application for rehearing denied – 2/7/05
- ***James v. Bartlet*, 607 S.E. 2d 638, 359 N.C. 260 (N.C. 2005)**
  - ISSUE: wrong precinct
    - Whether or not ballots cast outside the voter’s home precinct should be counted as long as the voter casts a ballot for races in his home precinct. 607 S.E. 2d at 640.
  - RESULT: NC state law requires voters to vote in the correct precinct; therefore, votes cast in the wrong precinct were not counted for state and local elections (did not discuss federal elections). 607 S.E. 2d at 645.
  - RATIONALE:
    - Plain language of state statute requires that the voter be a resident of the precinct he votes in and registers in (refers to “the precinct” versus “a precinct”). 607 S.E. 2d at 642.
    - No intent to enable voters to vote outside their precincts by Congress or state legislature in enacting provisional ballot statutes. 607 S.E. 2d at 643.
    - Administrative Code sets out precise circumstances under which a voter may vote a provisional ballot and specifies that the voter must reside in the precinct. 607 S.E. 2d at 643.
    - Court may not remedy Election Board’s decision to give provisional ballots to voters in a manner not authorized by State law. 607 S.E. 2d at 644.
    - Advantages of the precinct system: caps number of voters at one polling place; allows there to be one uniform ballot for all voters at that polling place; ballots may list only those elections a voter may



vote for (less confusing); easier to monitor fraud; and it puts polling places closer to people's homes. 607 S.E. 2d at 644-45.

- ***The League of Women Voters of Ohio et al v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004)**
  - ISSUES: wrong precinct & identification requirement for ballot to count
    - Wrong precinct issue. 340 F. Supp. 2d at 824.
    - Whether identification provided on election day should be required of provisional voters (voting provisionally because of ID requirement) in order for ballot to count. 340 F. Supp. 2d at 828.
      - Claim that it will cause provisional ballots voted by voters without identification (who cannot remember their numerical identifier, do not have a numerical identifier, or cannot return to the polls prior to closing) to be rejected.
        - Fourteenth Amendment fundamental rights claim.
        - Claim under HAVA based on interpretation of the “eligible” language.
  - RESULT:
    - Wrong precinct issue decided already in *Sandusky County Democratic Party*, and even though it was on appeal at the time of the decision, the Judge decided that the relief granted (or not) from that case would be sufficient to serve the interests of these plaintiffs as well (he did not reach a decision on the issue). 340 F. Supp. 2d at 824.
    - Identification or oral recitation of identification number (DL or SS) may be required before the polls close in order for a provisional ballot to count. 340 F. Supp. 2d at 831.
  - RATIONALE:
    - Identification may be required to preserve the integrity of elections and prevent voter fraud, which outweighs the interest in ensuring that every ballot count. 340 F. Supp. 2d at 829. Further, there is no less burdensome way to detect and prevent election fraud. *Id.*
    - Identification may be required because HAVA allows it; the requirement affects a small number of voters (registered by mail, voting for the first time, have no identification, cannot recite a numerical identifier); it is easy to obtain the identification information (telephone, quick return home); and notice is given of the requirement on the registration form. 340 F. Supp. 2d at 830.
    - Identification may be required because HAVA's language about “eligible under State law to vote” only means that the name on the registration form is eligible to vote. 340 F. Supp. 2d at 831. A voter must still prove that he/she is the same person as the person on the registration form, who is “eligible” to vote under State law, and proving identity is a reasonable burden. *Id.*

- ***Sandusky County Democratic Party v. Blackwell*, 339 F. Supp. 2d 975 (N.D. Ohio 2004)** – Order in District Court case, 10/14/04
- Sandusky County Democratic Party v. Blackwell*, 340 F. Supp. 2d 815 (N.D. Ohio 2004)** – Order in District Court case, 10/20/04
- Sandusky County Democratic Party v. Blackwell*, 386 F.3d 815 (6<sup>th</sup> Cir. 2004).** – Order in Sixth Circuit case, 10/23/04
- Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6<sup>th</sup> Cir. 2004)** – Opinion in Sixth Circuit case, 10/23/04
- Sandusky County Democratic Party v. Blackwell*, 361 F. Supp. 2d 688 (6<sup>th</sup> Cir. 2005)** – Opinion in District Court in Plaintiff’s request for attorney’s fees, which was granted, 3/3/05
  - ISSUE: wrong precinct
    - Plaintiffs claim that a Directive by the Secretary of State denies provisional ballots to voters inadvertently purged from voter lists or to those who go to the wrong precinct and only allows provisional ballots to voters who have moved and not updated their registration. Complaint 2-3.
      - Claim that this violates the purpose of HAVA – to ensure that all electors are eligible to vote provisionally. 339 F. Supp. 2d 975.
      - Claim that “jurisdiction” means the same as the geographic unit which maintains voter registration rolls and the same as its meaning in the NVRA. 387 F.3d at 574-75.
    - Statutory claim that HAVA provides an absolute right to cast a provisional ballot which counts provided that the voter is registered and eligible. Complaint 6-7.
      - Provisional ballots should be given to every voter who attempts to vote in the correct county but not necessarily the correct precinct. Complaint 10-11.
    - Claim that a voter (who has moved) who goes to one polling place attempting to vote and then goes to the other later should be allowed a provisional ballot. Complaint 12, 14.
  - RESULT: Votes cast in the wrong precinct may not be counted by a state, but voters must be permitted to cast them. 386 F.3d at 816. HAVA secures the right to cast a provisional ballot; the legality of the ballot must be determined under state law. 386 F.3d at 576.
  - RATIONALE:
    - Precinct system rooted in tradition; no indication Congress wished to completely overhaul the voting system of most states. 387 F.3d at 568; 387 F.3d at 576.
    - Advantages of precinct system: caps the number of voters at one place; allows ballot for all voters at one precinct to be the same for all elections; ballot lists only elections the voter may vote for (less confusing); easier to monitor and prevent fraud; and puts polling places closer to voter’s homes. 387 F.3d at 569.

- Court believes that the totality of the legislative history supports the notion that jurisdiction equals precinct, and votes cast outside the voter’s precinct should not be counted under HAVA. 387 F.3d at 575.
  - The District Court’s broad reading of “eligible under state law to vote” leads to the conclusion that a voter could vote multiple times in one election, and all of the provisional ballots would count if state law is not used to determine eligibility (since it is Ohio not federal law that specifies that a voter can vote only once).
  - Court relies on the presumption that Congress must be clear in order to alter the state-federal balance; thus, Congress would have been more clear if it intended to eliminate state control over polling location. 387 F.3d at 578.
  - But a provisional ballot must be provided to a voter, as HAVA’s purpose was to prevent on-the-spot denials of ballots to voters determined ineligible by precinct workers. 387 F.3d at 574.
    - Court believes that HAVA’s provisional voting was designed to compensate for the impossibility of having election officials with “perfect knowledge.” 387 F.3d at 570. Under this rationale, provisional voting is used when a voter’s eligibility in that precinct cannot be verified, but the voter insists that he/she is eligible because it is possible that the election officials do not have perfect information. *Id.*
- ***State of Ohio ex rel. Mackey et al v. Blackwell et al*, No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)**
  - ISSUES: equal protection issue & wrong precinct issue & how verification (against registration records) procedure should be conducted
    - Equal protection issue from different treatment on whether a voter should have a provisional ballot and different treatment on whether a provisional vote should be counted.
      - Claim that there were inconsistent standards for determining whether or not a voter received a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2.
      - Claim that there were inconsistent standards for determining whether or not to count a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2, 9.
    - Claim that votes cast in the wrong precinct should be counted given that many voters did not receive assistance to correct precinct, as required by Secretary of State’s directive. Original Action in Mandamus 3, 16-17.
    - Claim that provisional ballots lacking a signature, HAVA sticker, or other required information on the envelope were wrongfully rejected – allege that these are nonmaterial errors in violation of VRA. Original Action in Mandamus 6-7, 11, 14.

- Claim that provisional ballots should be verified by hand against registration records rather than only against computerized records. Original Action in Mandamus 12-13.
      - Allege that database was incomplete – some registration forms were not indexed and accessible to poll workers. *Id.*
      - Allege that registration forms were erroneously processed. *Id.*
  - RESULT: Dismissed for failure to state a claim upon which relief can be granted. 2004 WL 2973976, at \*2.

**Absentee voters who did not receive a ballot who wish to vote provisionally**

- ***Colorado Common Cause v. Donetta Davidson*, No. 04CV7709, 2004 WL 2360485 (Colo. Dist. Ct. Oct. 18, 2004)**
  - ISSUE: wrong precinct; absentee voters getting provisional ballots
    - Lawsuit challenges a state guideline that prohibits anyone voting in the wrong precinct from casting a ballot in any race but the presidential election based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at \*1.
    - Challenges state guideline that provisional ballots will not be counted if the voter applied for an absentee ballot based on HAVA and the Constitution (fundamental rights challenge). 2004 WL 2360485, at \*1.
  - RESULT: votes cast in the wrong precinct may only count for president and vice president; provisional votes cast by voters who applied for absentee ballots must be counted.
  - RATIONALE:
    - Court felt that Congress had no intent to eliminate precinct-based voting, a constitutional form of organizing voting; therefore, votes cast in the wrong precinct may not be counted for county-wide issues. 2004 WL 2360485, at \*11. Court also felt that the legislative history behind HAVA’s passage supported this notion. *Id.*
    - Court felt that requiring voters to vote in the correct precinct is not an unconstitutional infringement on the right to vote. 2004 WL 2360485, at \*14. The impact of the requirement is further lessened by the fact that poll workers will direct the voter to the correct precinct. *Id.* In addition, the Court felt that there was a compelling interest in preventing voter fraud furthered by the precinct system. *Id.*
      - The Court left the door open to the possibility that state-wide voting may be possible after a state-wide computerized database is established in 2006. *Id.*
    - Court felt that not allowing voters who requested an absentee ballot to vote provisionally would conflict with the purpose of HAVA to ensure that registered and eligible voters are allowed to vote provisionally. 2004 WL 2360485, at \*11, 12.
- ***White v. Blackwell, et al.***  
U.S. District Court for the Northern District of Ohio, Case No. 3:04CV 7689
  - ISSUE: absentee voters getting provisional ballots

- Absentee voters who failed to receive absentee ballots in the mail who wish to vote provisionally at the polls under HAVA.
      - Claim under HAVA that the Secretary of State and Board of Elections interpreted HAVA incorrectly. Complaint 8.
  - RESULT: Anyone who shows up to the polls and asserts eligibility to vote shall be permitted to cast a provisional ballot, including those who previously requested an absentee ballot. Memorandum Opinion and Order 3-4.
  - RATIONALE: HAVA, as interpreted in *Sandusky County Democratic Party*, is clear, anyone who asserts eligibility to vote is able to receive a provisional ballot under HAVA. Memorandum Opinion 3-4.

**Equal protection – inconsistent treatment or distribution of provisional ballots**

- ***Schering v. Blackwell***  
U.S. District Court for the Southern District of Ohio, Case No. 1:04-cv-755.
  - ISSUE: equal protection issue
    - Plaintiffs allege that the process for evaluating provisional ballots in Ohio violates the Equal Protection Clause; want uniform standards for evaluating provisional ballots
  - RESULT: Plaintiffs filed a stipulated dismissal. 3/15/05
  - Case never reached opinion.
- ***State of Ohio ex rel. Mackey et al v. Blackwell et al, No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)***
  - ISSUES: equal protection issue & wrong precinct issue & how verification (against registration records) procedure should be conducted
    - Equal protection issue from different treatment on whether a voter should have a provisional ballot and different treatment on whether a provisional vote should be counted.
      - Claim that there were inconsistent standards for determining whether or not a voter received a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2.
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    - Claim that provisional ballots lacking a signature, HAVA sticker, or other required information on the envelope were wrongfully rejected – allege that these are nonmaterial errors in violation of VRA. Original Action in Mandamus 6-7, 11, 14.
    - Claim that provisional ballots should be verified by hand against registration records rather than only against computerized records. Original Action in Mandamus 12-13.

- Allege that database was incomplete – some registration forms were not indexed and accessible to poll workers. *Id.*
- Allege that registration forms were erroneously processed. *Id.*
- RESULT: Dismissed for failure to state a claim upon which relief can be granted. 2004 WL 2973976, at \*2.

**Provisional ballots which were incomplete in some way (not signed, do not display election district, etc.)**

- ***Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)**
  - ISSUES: wrong precinct; voters who voted provisionally because other voters had signed poll ledger in their place; provisional ballots in which the envelope did not identify the election district of the voter
    - Claims all based on N.Y. election law – once case got to Supreme Court, no claims based on Constitution or HAVA.
  - RESULT:
    - Provisional votes in which the voter was in the correct polling place, but wrong district should be counted; voters in the wrong polling place and wrong district should not be counted. 4 N.Y. 3d at 128.
    - Provisional ballots cast by voters who claimed that another voter voted in his/her place and signed the precinct ledger should not be counted. 4 N.Y. 3d at 129.
    - Provisional ballots in which the election district was not identified on the envelope should be counted. 4 N.Y. 3d at 129.
  - RATIONALE: provisional ballots should be counted if the ballots were in dispute only as a result of ministerial errors by the election board. 4 N.Y. 3d at 129.
    - Ballots cast in the correct polling place but wrong district were counted because they were assumed to be the result of ministerial error; the election officers should have directed the voter to the correct voting table. 4 N.Y. 3d at 128. Ballots cast in the wrong polling place and district were not counted because it would be unreasonable to require poll workers to ensure that voters are at the correct polling site. *Id.*
    - Provisional votes cast by voters who claimed another voter had voted in their place earlier were not counted because of the possibility of fraud. 4 N.Y. 3d at 129.
    - Provisional ballots lacking the election district on the envelope were counted because they were cast in the correct election district, and mishandling by election officials caused the ballots to become unidentifiable with a district (election officials placed post-it notes on the ballots containing the missing information, but the notes later fell off). 4 N.Y. 3d at 129.
  - DISPOSITION: application for rehearing denied – 2/7/05

- ***Borders v. King County***  
Superior Court, Chelan County, No. 05-2-00027-3 [election contest filed 1/7/05 contesting the certification of the results of the election, decision 6/6/05]
  - ISSUES: provisional ballots incorrectly tabulated with regular ballots before being verified; verification for provisional ballots; provisional ballots without labels. Court's Oral Decision 6/6.
    - Provisional ballots cast directly into electronic voting machine or ballot tabulated before it was verified. Court's Oral Decision 6/6.
    - No signature or registration verification conducted for certain provisional ballots. Court's Oral Decision 6/6.
  - RESULT: election not overturned – even though illegal votes cast – no proof who they were cast for or whether the voter voted in the particular race at all. Court's Oral Decision 6/6.
  - RATIONALE:
    - Cannot prove whether a voter voted for a particular race; do not know which ballots were illegal. Court's Oral Decision 6/6.
    - No evidence of actual ballot stuffing. Court's Oral Decision 6/6.
    - Reconciliation issues and irregularities are common in elections. Court's Oral Decision 6/6.
    - No evidence the irregularities were intentional. Court's Oral Decision 6/6.
    - Probability techniques (proportional deduction) used to predict who an illegal voter voted for are not generally accepted scientific techniques. Court's Oral Decision 6/6.
    - Judicial restraint from interfering with elections. Court's Oral Decision 6/6.
    - Precedent – challenge under a WA statute, which previously had been interpreted to require direct or indirect wrongdoing by someone intending for the irregularity to help one candidate. Court's Oral Decision 6/6.

**Requirement for provisional ballot to be counted – ID required**

- ***Bay County Democratic Party, et al v. Land et al, 347 F. Supp. 2d 404 (E.D. Mich. 2004)***
  - ISSUE: wrong precinct; identification requirement for ballot to count
    - Lawsuit challenges Secretary of State's directive that votes cast in the wrong precinct but correct township, city, or village should not be counted based on HAVA. 347 F. Supp. 2d at 427-34.
    - Lawsuit challenges Secretary of State's directive that first time voters should be required to provide identification within six days of election day in order for their votes to count under HAVA, the Fourteenth Amendment to the Constitution, Michigan election law, and the Equal Protection Clause of the Michigan Constitution. 347 F. Supp. 2d at 434-35.
  - RESULT [but later overruled by Sixth Circuit]: votes cast in the wrong precinct but correct city, village, or township should be counted;

identification may be required of provisional voters after the election in order for their votes to count. 347 F. Supp. 2d at 438.

- RATIONALE:
  - With regard to the wrong precinct issue, the Court relies on the District Court decision in *Sandusky County Democratic Party v. Blackwell*, 339 F. Supp. 2d 975, 992-93 (N.D. Ohio 2004). *Bay County*, 347 F. Supp. 2d at 431-32.
  - The Court also relies on the “plain language” of HAVA – votes are to be counted in accordance with state law (dictates the *procedure* of counting); whether or not votes are counted is decided under HAVA; votes under HAVA are counted if the voter is “eligible” to vote. 347 F. Supp. 2d at 431-32.
  - With regard to the identification requirement, the Court found that the requirement was reasonable; that preventing voter fraud is a compelling interest; and that the requirement is applied uniformly and in a nondiscriminatory manner. 347 F. Supp. 2d at 435.
- **OVERRULED:** 6<sup>th</sup> Circuit ruled that votes in the wrong precinct should not be counted and interpreted “jurisdiction,” “eligible,” and the HAVA provision concerning provisional ballots differently. *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004).
- ***The League of Women Voters of Ohio et al v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004)**
  - ISSUES: wrong precinct & identification requirement for ballot to count
    - Wrong precinct issue. 340 F. Supp. 2d at 824.
    - Whether identification provided on election day should be required of provisional voters (voting provisionally because of ID requirement) in order for ballot to count. 340 F. Supp. 2d at 828.
      - Claim that it will cause provisional ballots voted by voters without identification (who cannot remember their numerical identifier, do not have a numerical identifier, or cannot return to the polls prior to closing) to be rejected.
        - Fourteenth Amendment fundamental rights claim.
        - Claim under HAVA based on interpretation of the “eligible” language.
  - RESULT:
    - Wrong precinct issue decided already in *Sandusky County Democratic Party*, and even though it was on appeal at the time of the decision, the Judge decided that the relief granted (or not) from that case would be sufficient to serve the interests of these plaintiffs as well (he did not reach a decision on the issue). 340 F. Supp. 2d at 824.
    - Identification or oral recitation of identification number (DL or SS) may be required before the polls close in order for a provisional ballot to count. 340 F. Supp. 2d at 831.



- RATIONALE:
  - Identification may be required to preserve the integrity of elections and prevent voter fraud, which outweighs the interest in ensuring that every ballot count. 340 F. Supp. 2d at 829. Further, there is no less burdensome way to detect and prevent election fraud. *Id.*
  - Identification may be required because HAVA allows it; the requirement affects a small number of voters (registered by mail, voting for the first time, have no identification, cannot recite a numerical identifier); it is easy to obtain the identification information (telephone, quick return home); and notice is given of the requirement on the registration form. 340 F. Supp. 2d at 830.
  - Identification may be required because HAVA’s language about “eligible under State law to vote” only means that the name on the registration form is eligible to vote. 340 F. Supp. 2d at 831. A voter must still prove that he/she is the same person as the person on the registration form, who is “eligible” to vote under State law, and proving identity is a reasonable burden. *Id.*

**Verification procedure for provisional ballots**

- ***State of Ohio ex rel. Mackey et al v. Blackwell et al*, No. 85597, 2004 WL 2973976 (Ohio App. 8 Dist. Dec. 22, 2004)**
  - ISSUES: equal protection issue & wrong precinct issue & how verification (against registration records) procedure should be conducted
    - Equal protection issue from different treatment on whether a voter should have a provisional ballot and different treatment on whether a provisional vote should be counted.
      - Claim that there were inconsistent standards for determining whether or not a voter received a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2.
      - Claim that there were inconsistent standards for determining whether or not to count a provisional ballot in violation of the Equal Protection Clause. Original Action in Mandamus 2, 9.
    - Claim that votes cast in the wrong precinct should be counted given that many voters did not receive assistance to correct precinct, as required by Secretary of State’s directive. Original Action in Mandamus 3, 16-17.
    - Claim that provisional ballots lacking a signature, HAVA sticker, or other required information on the envelope were wrongfully rejected – allege that these are nonmaterial errors in violation of VRA. Original Action in Mandamus 6-7, 11, 14.
    - Claim that provisional ballots should be verified by hand against registration records rather than only against computerized records. Original Action in Mandamus 12-13.
      - Allege that database was incomplete – some registration forms were not indexed and accessible to poll workers. *Id.*
      - Allege that registration forms were erroneously processed. *Id.*

- RESULT: Dismissed for failure to state a claim upon which relief can be granted. 2004 WL 2973976, at \*2.
- ***Borders v. King County***  
Superior Court, Chelan County, No. 05-2-00027-3 [election contest filed 1/7/05 contesting the certification of the results of the election, decision 6/6/05]
  - ISSUES: provisional ballots incorrectly tabulated with regular ballots before being verified; verification for provisional ballots; provisional ballots without labels. Court's Oral Decision 6/6.
    - Provisional ballots cast directly into electronic voting machine or ballot tabulated before it was verified. Court's Oral Decision 6/6.
    - No signature or registration verification conducted for certain provisional ballots. Court's Oral Decision 6/6.
  - RESULT: election not overturned – even though illegal votes cast – no proof who they were cast for or whether the voter voted in the particular race at all. Court's Oral Decision 6/6.
  - RATIONALE:
    - Cannot prove whether a voter voted for a particular race; do not know which ballots were illegal. Court's Oral Decision 6/6.
    - No evidence of actual ballot stuffing. Court's Oral Decision 6/6.
    - Reconciliation issues and irregularities are common in elections. Court's Oral Decision 6/6.
    - No evidence the irregularities were intentional. Court's Oral Decision 6/6.
    - Probability techniques (proportional deduction) used to predict who an illegal voter voted for are not generally accepted scientific techniques. Court's Oral Decision 6/6.
    - Judicial restraint from interfering with elections. Court's Oral Decision 6/6.
    - Precedent – challenge under a WA statute, which previously had been interpreted to require direct or indirect wrongdoing by someone intending for the irregularity to help one candidate. Court's Oral Decision 6/6.
- ***McDonald, et al v. Secretary of State, 103 P.3d 722 (Wash. 2004)*** [First Supreme Court review 12/14/04]
  - ISSUE: signature comparison; request for reconvassing of previously rejected ballots
    - Equal Protection Clause claim based on a disparity between signature-checking standards. 153 P.3d at 724.
    - Procedure for comparing signatures used in first canvass did not comport with Washington's statutory and regulatory scheme. 153 P.3d at 724.
  - RESULT: signature verification procedure in first canvass ok; no equal protection violation based on disparity between rejected provisional ballots; ballots may only be retabulated if they were counted or tallied in the previous count.

- RATIONALE:
  - Signature verification procedure used in first canvass was sufficient, as voters were permitted to correct or update signatures until the day prior to the canvass (Nov. 16). 153 P.3d at 724.
  - No equal protection violation, as the petitioners only established a disparity in ballots rejected, not actual disparity in procedures. Also because they did not allege any particular procedure was faulty. 153 P.3d at 724.
- ***Washington State Democratic Party v. King County Records, Elections & Licensing Services Division***  
 Superior Court, King County, 04-2-36048-0 SEA [Decision 11/16/04]
  - ISSUE: verifying ballots/disclosure of voters in risk of rejection for signature problems
    - King County elections officials ordered to give the State Democratic Party the names of 929 voters whose provisional ballots may be discarded because of signature problems. Memorandum Opinion 2.
      - Challenge under Public Disclosure Act. Memorandum Opinion 2-3.
        - County argued that HAVA prevented disclosure. *Id.*
      - Challenge under Equal Protection Clause. Memorandum Opinion 4.
    - Republican Party intervened and wanted provisional votes submitted by third parties (such as the Democratic Party) to be rejected, requiring voters to come down to the county board to verify their questioned signature. Memorandum Opinion 5.
  - RESULT: Democrats were entitled to disclosure of the names so that the voters could be contacted to verify their ballots; equal protection claim dismissed. Votes brought in by third parties should be counted.
  - RATIONALE:
    - Identity of voter or disposition of provisional ballots, but not votes cast, are subject to Public Disclosure Act. Memorandum Opinion 4.
    - Disclosure of voters' names leads to greater notice, which is the goal. Memorandum Opinion 4.
    - Equal protection claim – dispute is premature, and the evidence is hypothetical. Memorandum Opinion 4.
    - There is no evidence of fraud, no showing that King County is acting illegally, best protection against fraud is public disclosure, so Republicans' claim is dismissed. Memorandum Opinion 6.

**Provisional v. regular ballot for voter who properly registered but was left off election rolls**

- ***Citizens Alliance for Secure Elections v. Michael Vu***  
 U.S. District Court for the Northern District of Ohio, Case No. 1:04CV2147
  - ISSUE: whether voters who have moved but not updated their registration should receive a provisional ballot or a regular ballot; whether voters inadvertently left off registration rolls should receive a regular or provisional ballot.

- Plaintiffs claim that voters who have moved within the state but not updated their registration should not have to vote a provisional ballot at their new voting location but should instead vote a regular ballot. (Challenge guideline as in conflict with Ohio statute). Order Denying Plaintiffs' Motion for Temporary Restraining Order 2.
- Claim that Board of Elections violated the NVRA when they failed to properly process voter registration applications and properly notify applicants of the status of their incomplete (yet timely) applications. Motion for a Temporary Restraining Order, Memorandum in Support 2-3.
  - Allege clerical errors were made in transcribing registration cards to computer records, which resulted in applications being considered incomplete (and thus, will force those voters to vote a provisional ballot rather than a regular ballot).
  - Allege that Board neglected to register voters whose applications were timely submitted.
- Claim that the Board of Elections actions concerning these “incomplete” and lost registrations disenfranchise voters in violation of the Voting Rights Act. Motion Memorandum in Support 7.
- RESULT: Provisional ballot procedure is sufficient to allow voters who were inadvertently removed from the registration list or should be on the registration list an opportunity to vote – so voters who have moved or were erroneously left off the list are permitted to vote provisionally.
- RATIONALE: Provisional voting system seems reasonably calculated to remedy any situation in which a voter was left off the registered voter lists. Order 4.
- Plaintiffs dismissed their case without prejudice after their request for a temporary restraining order was rejected. Plaintiff’s Notice Of Voluntary Dismissal Without Prejudice.

**Voters who have moved and not updated their registration**

- *Citizens Alliance for Secure Elections v. Michael Vu*  
U.S. District Court for the Northern District of Ohio, Case No. 1:04CV2147
  - ISSUE: whether voters who have moved but not updated their registration should receive a provisional ballot or a regular ballot; whether voters inadvertently left off registration rolls should receive a regular or provisional ballot.
    - Plaintiffs claim that voters who have moved within the state but not updated their registration should not have to vote a provisional ballot at their new voting location but should instead vote a regular ballot. (Challenge guideline as in conflict with Ohio statute). Order Denying Plaintiffs' Motion for Temporary Restraining Order 2.
    - Claim that Board of Elections violated the NVRA when they failed to properly process voter registration applications and properly notify applicants of the status of their incomplete (yet timely) applications. Motion for a Temporary Restraining Order, Memorandum in Support 2-3.

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- RESULT: Provisional ballot procedure is sufficient to allow voters who were inadvertently removed from the registration list or should be on the registration list an opportunity to vote – so voters who have moved or were erroneously left off the list are permitted to vote provisionally.
- RATIONALE: Provisional voting system seems reasonably calculated to remedy any situation in which a voter was left off the registered voter lists. Order 4.
- Plaintiffs dismissed their case without prejudice after their request for a temporary restraining order was rejected. Plaintiff’s Notice Of Voluntary Dismissal Without Prejudice.

**Provisional ballots cast by voters who claimed that someone else voted in their place and signed precinct record**

- ***Panio v. Sunderland*, 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005)**
  - ISSUES: wrong precinct; voters who voted provisionally because other voters had signed poll ledger in their place; provisional ballots in which the envelope did not identify the election district of the voter
    - Claims all based on N.Y. election law – once case got to Supreme Court, no claims based on Constitution or HAVA.
  - RESULT:
    - Provisional votes in which the voter was in the correct polling place, but wrong district should be counted; voters in the wrong polling place and wrong district should not be counted. 4 N.Y. 3d at 128.
    - Provisional ballots cast by voters who claimed that another voter voted in his/her place and signed the precinct ledger should not be counted. 4 N.Y. 3d at 129.
    - Provisional ballots in which the election district was not identified on the envelope should be counted. 4 N.Y. 3d at 129.
  - RATIONALE: provisional ballots should be counted if the ballots were in dispute only as a result of ministerial errors by the election board. 4 N.Y. 3d at 129.
    - Ballots cast in the correct polling place but wrong district were counted because they were assumed to be the result of ministerial error; the election officers should have directed the voter to the correct voting table. 4 N.Y. 3d at 128. Ballots cast in the wrong polling place and district were not counted because it would be unreasonable to require poll workers to ensure that voters are at the correct polling site. *Id.*

- Provisional votes cast by voters who claimed another voter had voted in their place earlier were not counted because of the possibility of fraud. 4 N.Y. 3d at 129.
- Provisional ballots lacking the election district on the envelope were counted because they were cast in the correct election district, and mishandling by election officials caused the ballots to become unidentifiable with a district (election officials placed post-it notes on the ballots containing the missing information, but the notes later fell off). 4 N.Y. 3d at 129.

○ DISPOSITION: application for rehearing denied – 2/7/05

**Disclosure to a political party of provisional votes in danger of being rejected**

• ***Washington State Democratic Party v. King County Records, Elections & Licensing Services Division***

Superior Court, King County, 04-2-36048-0 SEA [Decision 11/16/04]

- ISSUE: verifying ballots/disclosure of voters in risk of rejection for signature problems
  - King County elections officials ordered to give the State Democratic Party the names of 929 voters whose provisional ballots may be discarded because of signature problems. Memorandum Opinion 2.
    - Challenge under Public Disclosure Act. Memorandum Opinion 2-3.
      - County argued that HAVA prevented disclosure. *Id.*
    - Challenge under Equal Protection Clause. Memorandum Opinion 4.
  - Republican Party intervened and wanted provisional votes submitted by third parties (such as the Democratic Party) to be rejected, requiring voters to come down to the county board to verify their questioned signature. Memorandum Opinion 5.
- RESULT: Democrats were entitled to disclosure of the names so that the voters could be contacted to verify their ballots; equal protection claim dismissed. Votes brought in by third parties should be counted.
- RATIONALE:
  - Identity of voter or disposition of provisional ballots, but not votes cast, are subject to Public Disclosure Act. Memorandum Opinion 4.
  - Disclosure of voters' names leads to greater notice, which is the goal. Memorandum Opinion 4.
  - Equal protection claim – dispute is premature, and the evidence is hypothetical. Memorandum Opinion 4.
  - There is no evidence of fraud, no showing that King County is acting illegally, best protection against fraud is public disclosure, so Republicans' claim is dismissed. Memorandum Opinion 6.

### **Provisional ballots incorrectly tabulated with regular ballots**

- ***Borders v. King County***  
Superior Court, Chelan County, No. 05-2-00027-3 [election contest filed 1/7/05 contesting the certification of the results of the election, decision 6/6/05]
  - ISSUES: provisional ballots incorrectly tabulated with regular ballots before being verified; verification for provisional ballots; provisional ballots without labels. Court's Oral Decision 6/6.
    - Provisional ballots cast directly into electronic voting machine or ballot tabulated before it was verified. Court's Oral Decision 6/6.
    - No signature or registration verification conducted for certain provisional ballots. Court's Oral Decision 6/6.
  - RESULT: election not overturned – even though illegal votes cast – no proof who they were cast for or whether the voter voted in the particular race at all. Court's Oral Decision 6/6.
  - RATIONALE:
    - Cannot prove whether a voter voted for a particular race; do not know which ballots were illegal. Court's Oral Decision 6/6.
    - No evidence of actual ballot stuffing. Court's Oral Decision 6/6.
    - Reconciliation issues and irregularities are common in elections. Court's Oral Decision 6/6.
    - No evidence the irregularities were intentional. Court's Oral Decision 6/6.
    - Probability techniques (proportional deduction) used to predict who an illegal voter voted for are not generally accepted scientific techniques. Court's Oral Decision 6/6.
    - Judicial restraint from interfering with elections. Court's Oral Decision 6/6.
    - Precedent – challenge under a WA statute, which previously had been interpreted to require direct or indirect wrongdoing by someone intending for the irregularity to help one candidate. Court's Oral Decision 6/6.

### **Re-canvassing ballots previously rejected**

- ***McDonald, et al v. Secretary of State, 103 P.3d 722 (Wash. 2004)*** [First Supreme Court review 12/14/04]
  - ISSUE: signature comparison; request for re-canvassing of previously rejected ballots
    - Equal Protection Clause claim based on a disparity between signature-checking standards. 153 P.3d at 724.
    - Procedure for comparing signatures used in first canvass did not comport with Washington's statutory and regulatory scheme. 153 P.3d at 724.
  - RESULT: signature verification procedure in first canvass ok; no equal protection violation based on disparity between rejected provisional ballots; ballots may only be retabulated if they were counted or tallied in the previous count.
  - RATIONALE:

- Signature verification procedure used in first canvass was sufficient, as voters were permitted to correct or update signatures until the day prior to the canvass (Nov. 16). 153 P.3d at 724.
  - No equal protection violation, as the petitioners only established a disparity in ballots rejected, not actual disparity in procedures. Also because they did not allege any particular procedure was faulty. 153 P.3d at 724.
- ***Washington State Republican Party v. King County Division of Records*, 103 P.3d 725 (Wash. 2004)** [Second Supreme Court review 12/22/04]
  - ISSUE: decision to recanvass ballots previously rejected to see if their rejection was erroneous
    - County canvassing board wished to recanvass provisional ballots coded “no signature on file” because the ballots had only been checked against the electronic database, not the paper records, the old system of registration, and records at the Secretary of State. 103 P.3d at 725-26. Challenge under state recanvassing statute. *Id.*
  - RESULT: The ballots incompletely canvassed may be recanvassed pursuant to Washington law. 103 P.3d at 728.
  - RATIONALE:
    - The ballots were never fully canvassed (because the secondary signature checks against other sources were never done), and the Board can correct this error through recanvassing. 103 P.3d at 727-28. This type of error is what the recanvassing statute is designed for. *Id.*